

**MQAC CASE REVIEW DISPOSITION**  
Commission Meeting RCM Presentation

Respondent: NAIBERT, DAVID

Case Number: 2011-159136

Date Presented: <u>2-23-12</u>	RCM: <u>Clower</u>	License#: <input checked="" type="checkbox"/> MD / <input type="checkbox"/> PA
Panel Chair: <u>Cullen</u>	Staff Attorney: <u>McLaughlin</u>	MQAC Clerk: <u>KRAMER ON</u>

PANEL A	Anderson, Brantner, Burger, Clower, Concannon, Cullen, Elders, Green, Johnson, Pattison, Winslow, <u>Sen V</u>
PANEL B	Cvitanovic, Dore, Gotthold, Harder, Harvey, Hensley, Hopkins, Marsh, Ruiz, Sen

**A. REQUEST FOR LEGAL ACTION :** ☐ Summary Suspension ☐ Summary Action ☐ Practice Restriction

<input type="checkbox"/> Statement of Charges	<input type="checkbox"/> Statement of Allegations /Stipulation to Informal Disposition
<input type="checkbox"/> Withdrawal of SOC	<input type="checkbox"/> SOA/STID for Voluntary Surrender
<input type="checkbox"/> Notice of Decision on Application: (Denied)	<input type="checkbox"/> Withdrawal of SOA
<input type="checkbox"/> Notice of Decision on Application (Granted with conditions)	<input type="checkbox"/> Notice of Correction

**Alleged Violations—RCW 18.130.180:**

<input type="checkbox"/> (1) Moral turpitude	<input type="checkbox"/> (10) Aiding and abetting	<input type="checkbox"/> (19) Treating by secret methods
<input type="checkbox"/> (2) Misrepresentation of facts	<input type="checkbox"/> (11) Violation of rules	<input type="checkbox"/> (20) Betrayal of patient privilege
<input type="checkbox"/> (3) False advertising	<input type="checkbox"/> (12) Practice beyond scope	<input type="checkbox"/> (21) Rebating
<input type="checkbox"/> (4) Incompetence	<input type="checkbox"/> (13) Misrepresentation or fraud	<input type="checkbox"/> (22) Interference with investigation
<input type="checkbox"/> (5) Out of state action	<input type="checkbox"/> (14) Failure to supervise	<input type="checkbox"/> (23) Current drug/alcohol misuse
<input type="checkbox"/> (6) Illegal use of drugs	<input type="checkbox"/> (15) Public health risk	<input type="checkbox"/> (24) Sexual contact/patient abuse
<input type="checkbox"/> (7) Violated state or federal law	<input type="checkbox"/> (16) Unnecessary or inefficacious drugs	<input type="checkbox"/> (25) Acceptance of more than nominal gratuity
<input type="checkbox"/> (8) Failure to cooperate	<input type="checkbox"/> (17) Criminal conviction	
<input type="checkbox"/> (9) Failure to comply	<input type="checkbox"/> (18) Criminal abortion	

**Other Violations of Relevant State or Federal Law or RCW 18.130.170:** \_\_\_\_\_  
☐ Mental Impairment ☐ Physical Impairment

**B. CLOSED AFTER INVESTIGATION:**

<input type="checkbox"/> Application investigation only - Panel decides to grant without conditions	<input type="checkbox"/> A7-Mistaken identity
<input type="checkbox"/> A1-Care rendered was within standard of care	<input type="checkbox"/> A8-No jurisdiction
<input type="checkbox"/> A2-Complainant withdrew	<input type="checkbox"/> A11- No whistleblower
<input type="checkbox"/> A3- Unique closure (Panel must explain)	<input type="checkbox"/> A12-Risk minimal, not likely to reoccur
<input checked="" type="checkbox"/> A5-Evidence does not support a violation	<input type="checkbox"/> Sexual Misconduct : RCW 18.130.062 No standard of care MQAC retail / Refer to Secretary non clinical

**OTHER EXPLANATIONS (Legal Review, Return to Investigation:**

1)	
2)	

# GUIDE FOR CLOSURE CODES

## September 2011

Code	Closure	Description
	Application	Decision to grant an unrestricted license.
A-1	Care rendered was within standard of care	The evidence establishes that the respondent met or exceeded the standard of care.
A-2	Complainant withdrew complaint	The complainant withdrew the complaint, and the complainant's testimony is necessary to meet the burden of proof.
A-3	Unique closure (Panel must explain)	Any concerns regarding Respondent have been resolved through corrective action; license revocation, and suspension, death of respondent or other circumstances. <ul style="list-style-type: none"> <li>(explain): _____</li> <li>_____</li> <li>_____</li> </ul>
A-5	Evidence does not support a violation	<ul style="list-style-type: none"> <li>The evidence is not sufficient to establish by clear, cogent, and convincing evidence that Respondent violated any UDA provision.</li> <li>This includes situations in which the investigator was unable to obtain all material evidence.</li> </ul>
A-7	Mistaken identity	The case opened under the wrong respondent's name.
A-8	No Jurisdiction	Respondent is not licensed in Washington, has never been licensed in Washington, and is not applying for a license in Washington.
A-11	No Whistleblower Release	Complainant would not sign a whistleblower release AND the release of complainant's identity is necessary to prove a UDA violation.
A-12	Risk Minimal- Not likely to Reoccur	There is sufficient evidence that Respondent violated the UDA, but the evidence indicates that:  (a) the violation is not likely to reoccur and (b) closure poses no more than a minimal risk to the public.

zdan guideclosecode revised mlf 0914-2011

## Case View Screen [update]



Case Status	2011-159136 (PUBLIC: Internal) CLOSED	Date Created	08/08/2011	Audit Entry Items Documents Notes Master Case Participant Add Master Timeline
Respondent ID	428389	Date Received	08/08/2011	
Respondent	DAVID KEITH NAIBERT	How Received	Email	
Credential	MD.MD.00026754	Receiving Board	COMMISSION	
Address	<input type="radio"/> Public <input checked="" type="radio"/> Mail	Receiving Profession	Physician And Surgeon License	
	<div>DAVID KEITH NAIBERT</div> <div>2 - DOH Licensee Health...</div>	Receiving Department	Case Intake	
		Received By	Cynthia R Hamilton	
		Alleged Issues	Improper or Abusive Billing Practices	
		Patient Care	Patient Neglect	
		Case Nature	Standard of Care/Services	
Complainant ID	1001617			
Complainant	Terry Kill			
Comments:				

- Resolution
- Action Items
- Participants
- Priority History
- HIPDB Reports
- TimeTracker

## Resolution [update]

Field	Value	Field	Value
Department:	Case Management	Found Issues:	• None
Worker:	Angela M Bucci	Resolution:	• Evidence does not support a violation

Date Closed: 02/23/2012

## Resolution Notes:

## Action Items [add] [add group]

Type	Assigned To	Activity	Track Time	Due Effective	Completed	Order Signed	Created	User
Legal Case Finalized	Case Management, Bucci, Angela M		[add]	02/23/2012	02/28/2012		02/28/2012	Bucci Ange
Target: DAVID KEITH NAIBERT, MD.MD.00026754								
Change Status to Closed	Case Management, Bucci, Angela M		[add]	02/23/2012	02/28/2012		02/28/2012	Bucci Ange
Target: DAVID KEITH NAIBERT, MD.MD.00026754								
Case Status: Status Changed To: CLOSED								
Action Info: Resolution Recorded? Yes								
Comments: Closed A-5 at 2/23/12 Commission Meeting.								
Present for Case Disposition	Case Management, Bucci, Angela M		[add]	02/23/2012	02/23/2012		02/28/2012	Bucci Ange
Target: DAVID KEITH NAIBERT, MD.MD.00026754								
Case Status: Status Changed To: Case Disposition								
Action Info: Decision Date 02/23/2012								
CMT Decision Maker 1 Anderson Bruce								
CMT Decision Maker 2 Brantner Richard								
CMT Decision Maker 3 Burger Leslie								
CMT Decision Maker 4 Clower Athalia								
CMT Decision Maker 5 Concannon Mike								
CMT Decision Maker 6 Cullen Bruce								
CMT Decision Maker 7 Elders Theresa								
CMT Decision Maker 8 Green Thomas								
CMT Decision Maker 9 Johnson Mark L								
CMT Decision Maker 10 Pattison Mimi								
CMT Decision Maker 11 Winslow Mary								
CMT Decision Maker 12 Small Robert								
Comments: Closed A-5 at 2/23/12 Commission Meeting.								
Assign Staff Attorney	Staff Attorney, McLaughlin, Jim		[add]	01/12/2012			01/12/2012	Bartk Rand
Target: DAVID KEITH NAIBERT, MD.MD.00026754								
Board/Commission Review	Case Management, Bucci, Angela M		[add]	01/12/2012	01/12/2012		01/12/2012	Bartk Rand

Target: DAVID KEITH NAIBERT, MD.MD.00026754						
Action Info: Reviewing Board/Commission Member 1 Clower Athalia						
Forward Case File for Copies (Copy Center)	Case Management, Bucci, Angela M	[add]	01/10/2012	01/10/2012	01/10/2012	Bartle Rand
Target: DAVID KEITH NAIBERT, MD.MD.00026754						
Assigned RBM/RCM	Case Management, Bucci, Angela M	[add]	01/10/2012	01/10/2012	01/10/2012	Bartle Rand
Target: DAVID KEITH NAIBERT, MD.MD.00026754						
Action Info: Reviewing Bd/Comm Member Name Clower						
Forward for Case Manager Review Invest Complete	Case Management, Bartley, Randy	[add]	01/06/2012	01/06/2012	01/06/2012	Creig Vicki
Target: DAVID KEITH NAIBERT, MD.MD.00026754						
Case Status: Status Changed To: Case Disposition						
Investigative Forward for Closure of Investigation	Investigation Supervisor, Smith, James H	[add]	01/06/2012	01/06/2012	01/06/2012	Creig Vicki
Target: DAVID KEITH NAIBERT, MD.MD.00026754						
Assign Investigator	Investigation, Gruchalla, Denise	[add]	09/01/2011	09/01/2011	09/01/2011	Creig Vicki
Target: DAVID KEITH NAIBERT, MD.MD.00026754						
Action Info: Priority Set and Entered? Yes						
File Location	Investigation, Creighton, Vicki I	[add]	08/22/2011	09/01/2011	08/22/2011	Creig Vicki
Target: DAVID KEITH NAIBERT, MD.MD.00026754						
Comments: WBW DUE 9/6/2011 9/1/2011 WBW received						
Investigative Correspondence - General	Investigation, Creighton, Vicki I	[add]	08/22/2011	08/22/2011	08/22/2011	Creig Vicki
Target: DAVID KEITH NAIBERT, MD.MD.00026754						
Comments: RECEIVED CONTACT INFORMATION FROM COMPLAINANT NOTIFICATION, ACKNOWLEDGEMENT & WBW LETTERS MAILED						
Investigative - Case Activity	Investigation, Creighton, Vicki I	[add]	08/22/2011	08/22/2011	08/22/2011	Creig Vicki
Target: DAVID KEITH NAIBERT, MD.MD.00026754						
Comments: SENT EMAIL TO COMPLAINANT REQUESTING CONTACT INFORMATION.						
Change Case Owner	Investigation, Creighton, Vicki I	[add]	08/22/2011	08/22/2011	08/22/2011	Creig Vicki
Target: DAVID KEITH NAIBERT, MD.MD.00026754						
Forward for Investigation	Investigation Supervisor, Smith, James H	[add]	08/17/2011	08/17/2011	08/22/2011	Creig Vicki
Target: DAVID KEITH NAIBERT, MD.MD.00026754						
Case Status: Status Changed To: Investigation						
Present for Assessment	Case Management, Creighton, Vicki I	[add]	08/08/2011	08/17/2011	08/17/2011	Creig Vicki
Target: DAVID KEITH NAIBERT MD.MD.00026754						
Case Status: Status Changed To: Assessment						
Action Info: Decision Date 08/17/2011						
CMT Decision Maker 1 Harder Ellen						
CMT Decision Maker 2 Dore Frederick						
CMT Decision Maker 3 Elders Theresa						
CMT Decision Maker 4 Mager Suzanne						
CMT Decision Maker 5 Smith Jim						
CMT Decision Maker 6 Newman Dani						
CMT Decision Maker 7 McEachron Melissa						
CMT Decision Maker 8 Heye George						
CMT Decision Maker 9 Creighton Vicki						
Intake	Case Intake, Hamilton, Cynthia R	[add]	08/08/2011	08/08/2011	08/08/2011	Ham Cynth
Target: DAVID KEITH NAIBERT						
Warning: Warning Type: CASE PENDING						
Warning Effective Date: 08/08/2011						
Suppress License Print: NO						
Warning: 2011-159136						
Case Status: Status Changed To: Intake						
Action Info: Complaint Source Family Member						
Possible Imminent Danger? No						

Single Complaint  
Process Coordination      No  
Needed?

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Investigator/Attorney/RCM: Gruchalla/McLaughlin/Clower

**CASE NUMBER:** 2011-159136MD

**RESPONDENT:** DAVID KEITH NAIBERT

**SPECIALTY:** FAMILY MEDICINE AND PAIN MANAGEMENT

**BOARD CERTIFICATION:** NONE

**SPECIALTY :** SELF DESIGNATION-Family Medicine and Pain Management

Other licenses: MT surrendered 3/31/97

**Medical School:** 1987 UWMC, Residency Seattle 7/87-6/88 VMMC flexible-trans; 7/88 -8/89 VMMC Anesthesiology

**LICENSED SINCE** 1989

**PRIORS:** SIX, five closed, one in case disposition.

**COMPLAINANT:** The husband of a patient who explained that they explained to respondent the patient cannot take Tylenol. She was rx'd medication containing Tylenol, when she asked for a new rx, she was told she was going to have to pay 160 dollars for the doctor to re-write her rx. She had paid 380 for the initial visit.

Case Review: The visits to this provider are priced at \$530.00. This patient received a discount and was charged \$380 plus \$150 for a urine drug screen. This seems expensive.

Regarding the care rendered, there were a few misunderstandings with phone calls and communication, but there is no evidence of violation of the standard of care.

Recommendation:

1 - Attorney Work Product - RCW 42.56.290



**CONFIDENTIAL INVESTIGATIVE REPORT**  
**PREPARED FOR THE**  
**MEDICAL QUALITY ASSURANCE COMMISSION**

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**CASE #2011 – 159136MD**

**Respondent: David Keith Naibert**

**Attorney: None**

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**ILRS Address:** 2 - DOH Licensee Health Professional Home Address and/or Phone - RCW 42.56.350(2)

**Office: 21701 – 76<sup>th</sup> Ave West, Suite 203, Edmonds WA 98026**

\*\*\*\*\*

**Specialty: Self Designation - Family Medicine and Pain Management**

**Board Certification: None**

**Type of Practice: Pain Management**

**DOB: 10/22/1959**

**Licenses: MD00026754 Iss: 09/05/1989 Exp: 10/22/2012**

**MT 8/9/91 – 3/31/1997 Inactive (Surrendered)**

**Medical School: 1987 UWMC, Seattle**

**Residency: 7/1987 – 6/1988 – VMMC, Seattle WA – Flexible/Trans**

**7/1988 – 8/1989 – VMMC, Seattle, WA - Anesthesiology**

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**Complainant: Terry Kill**

**Attorney: Unknown**

**133 – 124<sup>th</sup> St. SE, #C104, Everett, WA 98208**

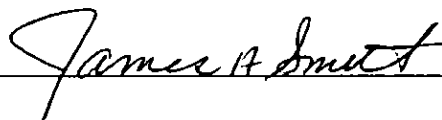
**Patient: Twyla Kill**

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**Investigative Case File completed by Investigator Denise J Gruchalla PAC**

**Date: 1/6/2012**

**APPROVED:**



**DATE:** 1-6-12

### PRIOR CASE HISTORY:

90-04-0190 – Closed NCFA, 07-08-0070MD – Below Threshold  
2009-141093 – Below Threshold; 2010-147523 – Closed NCFA;  
2010-150538- Closed NCFA; 0211-155360 Closed NCFA/No WB Waiver  
2011-160784 – Currently In investigations

### GENERAL CASE SUMMARY

**COMPLAINT / ALLEGATIONS:** The complainant writes that the respondent incorrectly wrote a prescription for oxycodone with Tylenol for his wife after she had explained that she was using plain oxycodone. The respondent's office reportedly told her that she would have to pay an additional \$160 for the doctor to re-write the prescription. She was then later told she was discharged as a patient due to her erratic behavior.

**CASE REVIEW:** The complainant is the husband of the patient. The patient is 4 - Heal... a 36 year-old female. The respondent has been licensed in Washington since 1989, did a residency in anesthesiology. In 1997 he surrendered his license in Montana. He is a non-board certified, self-designates as a family physician and specializes in pain management.

The complaint alleges that the respondent was "unprofessional" because:

1. He incorrectly wrote a prescription for oxycodone and Tylenol despite the patient's report that Tylenol component aggravates her migraines by causing rebound.
2. When the patient called the respondent's office, she was told that prescription changes required an office visit and the charge would be \$160.
3. The staff hung up the phone on the patient after she "tried to reason with them and asked them why there were so many problems with this ..."  
The patient was subsequently dismissed from the practice for her "erratic behavior".

**(Complaint pages 1-5)**

In his statement, **(Pages 7 – 8)**, the respondent explained that he agreed to see the patient at a significantly discounted rate of \$380.00 instead of the usual \$530.00, and states that the \$580.00 noted in the complaint is inaccurate.

***Note: the patient also paid \$150.00 cash for a urine drug screen that was done at the initial evaluation appointment which equals \$580.00 total. (Page 11)***

The respondent acknowledges that the patient told him that she was taking oxycodone and that he did in fact write a prescription for Percocet, which is a combination of oxycodone and acetaminophen (Tylenol). The respondent wishes to make it clear however, that the patient never communicated to him about any alleged problem or sensitivities with Tylenol or that it gave her headaches. And, says that the patient contacted his office on July 20, 2011, the day after her appointment and not on July 19, 2011, which was the same day as her appointment, as stated in the complaint.

The respondent further states that the oxycodone dosage in the Percocet was an exact equivalent as the straight oxycodone the patient had been taking, and that even though the patient asserted that acetaminophen gave her headaches, he does not believe that taking the Percocet for one month would cause her any harm. The patient was asked if she would take the Percocet for 1 month until her next appointment at which time the respondent would prescribe plain oxycodone and she agreed.

The respondent further states that on August 5, 2011, 16 days after the patient's appointment, he was contacted by staff from Andrew Lynch M.D, office (referring psychiatrist) because the patient had asked them to change her Percocet to plain oxycodone. The respondent discussed his concerns about the patient's behavior with the staff person and explained that it is a red-flag for aberrant drug behavior when patient's demand straight oxycodone over oxycodone/acetaminophen combinations; the Respondent however did agree to replace the remaining Percocet with oxycodone.

Apparently, the patient immediately started calling the respondent's office before the respondent had a chance to inform his staff of the situation. The staff responded to the patient's calls with the usual office policies and procedures. The patient called the office a second time and became abusive; calling the staff person names, at which point the respondent instructed his staff to immediately dismiss the patient. The respondent cites the patient's non-compliance with item #1 of the Opioid Treatment Agreement as reason for terminating the patient. **(Refer to pages 20 - 21)**

The respondent also explained 1) why a patient demand for "straight oxycodone" over Percocet is a "serious red-flag". 2) That initial evaluations typical last 1 hour 20 minutes during which time he interviews patients, reviews medical records and tries to ferret out issues. And, 3) He has abandoned the new patient no-show policy since potential patients were put off by it, but, as a result, the no-show rate has skyrocketed.

This investigative report is forwarded to the Medical Quality Assurance Commission for review.

4. CONTACTS:

Complainant

Respondent

Denise J Gruchalla PAC  
Health Care Investigator  
Medical Quality Assurance Commission  
PO Box 47866  
Olympia, WA 98504 – 7866  
Tel: 360-236-2775, Fax: 360-586-4573  
[Denise.gruchalla@doh.wa.gov](mailto:Denise.gruchalla@doh.wa.gov)

ACTIVITY:

<u>Date</u>	<u>Activity</u>
8/17/11	Investigation authorized
8/22/11	Respondent and Complainant Letters/WB sent
9/01/11	Signed WB Waiver received signed both Approval and Denial sections. Received additional complaint and impact statement.
9/08/11	Case review, investigation initiation and planning
11/1/11	Mailed Respondent LOC and copy of redacted complaint via USPS. Due 11/21/11.
11/14/11	Received Respondents statement, patient's clinic medical records and billing statement as requested.
1/6/2012	Investigative report forwarded to the Medical Quality Assurance Commission for review.

## MQAC ASSIGNMENT MEMO

Case #: 2011-159136

Respondent: Naibert, David K.

Date Received: 8-17-11 Date Assigned: 8-17-11

Investigator: Denise Gruchalla

Priority: A ☐ B ☐ C ☒ D ☐ Code: 87

- ☒ Respondent Notification Letter
- ☒ Complainant Acknowledgement Letter
- ☒ Whistleblower Letter & Waiver
- ☐ Malpractice Letter

Abandonment	Health & Safety Violations	Neglect	Possible Summary Action	Sexual Misconduct
Abduction	High visibility	No Patient Harm	Practice Beyond Scope	Single Complaint Process
Abuse	Imminent Harm	Non-Compliance	Prohibition in another state	Standard of Care <input checked="" type="checkbox"/>
Action w/other state/jurisdiction	Inappropriate Communication	Other	Sanitation	Substance Abuse
Credential Application	Inspection Issues	Patient Abuse	Serious Injury	Testing Issues
EMTALA	Jurisdictional Questions	Patient Death	Serious Physical Harm	Transfusion Fatality
Exposure to physical/fire hazards	Mandatory Suspension	Physical Plant	Sexual Contact	Unlicensed Practice

Comments: \_\_\_\_\_

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Background Check Processed

AUG 17 2011 *Report*

NPDB/HIPDB  
DEPARTMENT OF HEALTH  
MEDICAL COMMISSION

**MQAC REVIEW**  
**Case Number: 2011-159136**

Date: August 8, 2011  
Presented by: George Heye, MD

<b>Respondent:</b>	<b>NAIBERT, DAVID KEITH, MD</b>	<b>King County</b>
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<b>Complainant:</b>	<b>Mr. Terry Kill</b>
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<b>CASE SUMMARY</b>
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**The Respondent:**

Board Certified:	NO. Self designation: FAMILY MEDICINE
DOB:	10-22-1959
Licensed since:	09-05-1989
Expiration date:	10-22-2012
Medical School:	1987—U of WA; Seattle, WA
Residency:	07/1987-06/1988—Virginia Mason Med Ctr; WA— FLEXIBLE OR TRANSITIONAL 07/1988-08/1989—Virginia Mason Med Ctr; WA— ANESTHESIOLOGY

**The Complainant:** The husband of a patient

**Malpractice Settlement:**

**The Complaint** The complainant writes that the respondent incorrectly wrote a prescription for oxycodone with Tylenol for his wife after she had explained that she was using plain oxycodone. The respondent's office reportedly told her that she would have to pay an additional \$160 for the doctor to re-write the prescription. She was then later told she was discharged as a patient due to her erratic behavior.

**RCM Review**

**Prior Cases:**

**90-04-0190MD -- Closed NCFA.**

**07-08-0070MD** – The complainant saw the respondent hoping that he would take over management of her chronic pain from fibromyalgia and osteoarthritis. The patient was also on medications for anxiety and narcolepsy. At the time of her first visit she was on the following medications: Endocet (Percocet), methadone, carisoprodol (Soma), clonazepam (Klonopin), nabumetone (Relafen[NSAID]) and Provigil (modafinil). The respondent did an evaluation and reportedly spent a lot of time explaining why he did not like clonazepam. The respondent required a UA for drugs. At the second visit the respondent accused the patient or her husband of selling her medication because her urine did not show the presence of hydrocodone. The patient said she took all the medications herself and that she was on percocet, not hydrocodone. A repeat UA was ordered. At the third and last visit the respondent said that the second urine test did not show high enough levels of methadone to account for her taking 40

mgs a day. The respondent then refused to see or treat her any further. The patient returned to her PCP and is now searching for another pain doctor.

***Closed Below Threshold (not investigated).***

**2009-141093** The complainant says he was incorrectly billed for a urine drug screen that was ordered by the respondent who was treating him for chronic pain. The patient was unable to produce a urine specimen during the visit but the billing went forward anyway. The insurance company agreed to remove the charge but the respondent's billing service has not yet straightened out the bill. The respondent did dismiss the patient from his practice for not providing a urine sample but the patient was fine with that.

***Closed Below Threshold (not investigated).***

**2010-147523** – Respondents are reportedly using a non CLIA waived device (Noble 12) for their point of care drug testing and are billing insurances for the testing. The Noble 12 screen includes buprenorphine. Allegedly the respondents do not follow the manufacturer's instructions to confirm all positive screening tests.

***Closed NCFA.***

**2010-150538** – The respondent discharged a pain patient from his practice after a urine done several months earlier was positive for a non prescribed substance. Respondent referred the patient to rehab facilities. The complainant feels that respondent's action amounted to abandonment of the patient.

***Currently in Case Disposition. Investigator: Gruchalla; Staff Atty: Landreau; RCM: Clower.***

**2011-155360** – The complainant writes that the respondent reported to another of his providers (an ARNP) that the complainant had had three positive urinalysis screenings for marijuana. The complainant says he has been under the care of the respondent for chronic pain for the past year and he had no knowledge of positive urine tests. He went to the respondent's office and obtained a copy of his medical records. He found a total of three urinalysis reports all showing negative for marijuana. The complainant contacted respondent's office nurse and she agreed to fax copies of the reports to the ARNP. The complainant says he works in the field of Corrections and mistakes such as this can jeopardize one's career.

***Closed NCFA/no whistleblower waiver.***

**Recommendation:**



## QUERY RESPONSE

This query was processed under the provisions of:

5 - He... Title IV (NPDB)

5 - He... Section 1921 (NPDB)

5 - He... Section 1128E (HIPDB)

### A: SEARCH RESULT (Based on the subject identification information provided, the reports found are listed below.)

Type of Report(s)

Medical Malpractice Payment Report(s):

State Licensure Action(s):

Exclusion or Debarment Action(s):

Clinical Privileges Action(s):

Professional Society Action(s):

DEA/Federal Licensure Action(s):

Peer Review Organization Action(s):

5 - Healthcare Integrity and Protection Data Bank Information or National Practitioner Data Bank Information - 45 CFR 61.14, RCW 42....

### B. SUBJECT IDENTIFICATION INFORMATION (Recipients should verify that subject identified is, in fact, the subject of interest.)

Subject Name:

Gender:

Date of Birth:

Other Name(s) Used:

Organization Name:

Organization Type:

Work Address:

City, State, ZIP:

Home Address:

City, State, ZIP:

Social Security Numbers (SSN):

Individual Taxpayer Identification Numbers (ITIN):

Professional School(s) & Year of Graduation:

Occupation/Field of Licensure (Code):

State License Number, State of Licensure:

Drug Enforcement Administration (DEA) Numbers:

National Provider Identifiers (NPI):

Federal Employer Identification Numbers (FEIN):

Unique Physician Identification Numbers (UPIN):

5 - Healthcare Integrity and Protection Data Bank Information or National Practitioner Data Bank Information - 45 CF...

### C. ENTITY INFORMATION

Entity Name:

Authorized Agent:

Authorized Submitter's Name:

Authorized Submitter's Title:

Authorized Submitter's Telephone:

5 - Healthcare Integrity and Protection Data Bank Information or National Practitioner Data Bank Information - 45 CFR 61.14, ...

CONFIDENTIAL DOCUMENT - FOR AUTHORIZED USE ONLY

## ADVERSE ACTION REPORT

### LICENSE ACTION

Report Number 5 - Healthcare Integrity and Pr...

This report is maintained under the provisions of:

5 - He... Title IV (NPDB)

5 - H... Section 1921 (NPDB)

5 - He... Section 1128E (HIPDB)

The information contained in this report is maintained by the National Practitioner Data Bank for restricted use under the provisions of Title IV of Public Law 99-660, as amended; Section 1921 of the Social Security Act; and 45 CFR Part 60. This report also is maintained by the Healthcare Integrity and Protection Data Bank for restricted use under the provisions of Section 1128E of the Social Security Act and 45 CFR Part 61. All information is confidential and may be used only for the purpose for which it was disclosed. Disclosure or use of confidential information for other purposes is a violation of Federal law. For additional information or clarification, contact the reporting entity identified in Section A.

#### A. REPORTING ENTITY

Entity Name:

Address:

City, State, Zip:

Country:

Name of Office:

Title or Department:

Telephone:

Entity Internal Report Reference:

Type of Report:

Previous Report Number:

5 - Healthcare Integrity and Protection Data Bank Information or National Practitioner Data Bank Information - ...

\*The reporting entity has changed its name or address on file with the Data Banks. The following is the entity's most recent contact information reported to the Data Banks on 08/05/2011:

Entity Name:

Address:

City, State, Zip:

Country:

5 - Healthcare Integrity and Protection Data Bank Information or National Practitioner Data Bank Information - ...

#### B. SUBJECT IDENTIFICATION INFORMATION (INDIVIDUAL)

Subject Name:

Other Name(s) Used:

Gender:

Date of Birth:

Organization Name:

Work Address:

City, State, ZIP:

Home Address:

City, State, ZIP:

Deceased:

5 - Healthcare Integrity and Protection Data Bank Information or National Practitioner Data Bank Info...

Social Security Numbers (SSN):

Professional School(s) & Year(s) of Graduation:

Occupation/Field of Licensure (Code):

State License Number, State of Licensure:

Drug Enforcement Administration (DEA) Numbers:

CONFIDENTIAL DOCUMENT - FOR AUTHORIZED USE ONLY

National Practitioner Data Bank  
Healthcare Integrity and Protection Data Bank  
P.O. Box 10832  
Chantilly, VA 20153-0832

<http://www.npdb-hipdb.hrsa.gov>

DCN: 5 - Healthcare Integrity and P...

Process Date: 07/06/1999

Page: 2 of 2

5 - Healthcare Integrity and Pr...

For authorized use by:  
WASHINGTON STATE DEPARTMENT OF  
HEALTH

**C. INFORMATION  
REPORTED**

**NOTE:** Information marked with an asterisk (\*) was added, corrected, or removed.

Date of the Report:  
Type of Action Taken:  
\* Action Classification:

Date of the Action:  
Length of Action:  
Effective Date:

\* Description of Act(s) or Omission(s)  
or Other Reasons for Action Taken:

5 - Healthcare Integrity and Protection Data Bank Information or National Practitioner Data Bank Informatio...

**D. SUBJECT  
STATEMENT**

If the subject identified in Section B of this report has submitted a statement, it appears in this section.

5 - Healthcare Integrity and Protection Data Bank Information or National Practitioner Data Bank Information - 45 CFR 61.14, RCW 42.56.070(1)

**E. REPORT STATUS**

Unless a box below is checked, the subject of this report identified in Section B has not contested this report.

☐ If box is checked, this report has been disputed by the subject identified in Section B.

☐ If box is checked, at the request of the subject identified in Section B, this report is being reviewed by the Secretary of the U.S. Department of Health and Human Services to determine its accuracy and/or whether it complies with reporting requirements. No decision has been reached.

☐ If box is checked, at the request of the subject identified in Section B, this report was reviewed by the Secretary of the U.S. Department of Health and Human Services. The Secretary's decision is shown below:

Date of Original Submission:  
Date of Most Recent Change:

5 - Healthcare Integrity and Protection Data Bank Information or National Practitioner Data Bank Information - 45...

**END OF REPORT**

**CONFIDENTIAL DOCUMENT - FOR AUTHORIZED USE ONLY**

# MEDICAL QUALITY ASSURANCE COMMISSION

## CMT

### Review of Cases

CMT DATE/  
Panel Members/  
Decision:

**MQAC CMT - AUGUST 17, 2011**

Ellen Harder, PA-C, Chair

Rick Dore, MD

Teri Elders, Public Member

**DECISION: *Investigation authorized***

Case No.: 2011-159136

The attached pages were reviewed:

106-108  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**MQAC REVIEW**  
**Case Number: 2011-159136**

Date: August 8, 2011  
Presented by: George Heye, MD

<b>Respondent:</b>	<b>NAIBERT, DAVID KEITH, MD</b>	<b>King County</b>
--------------------	---------------------------------	--------------------

<b>Complainant:</b>	<b>Mr. Terry Kill</b>
---------------------	-----------------------

**CASE SUMMARY**

**The Respondent:**

Board Certified:	NO. Self designation: FAMILY MEDICINE
DOB:	10-22-1959
Licensed since:	09-05-1989
Expiration date:	10-22-2012
Medical School:	1987—U of WA; Seattle, WA
Residency:	07/1987-06/1988—Virginia Mason Med Ctr; WA— FLEXIBLE OR TRANSITIONAL 07/1988-08/1989—Virginia Mason Med Ctr; WA— ANESTHESIOLOGY

**The Complainant:** The husband of a patient

**Malpractice Settlement:**

**The Complaint:** The complainant writes that the respondent incorrectly wrote a prescription for oxycodone with Tylenol for his wife after she had explained that she was using plain oxycodone. The respondent's office reportedly told her that she would have to pay an additional \$160 for the doctor to re-write the prescription. She was then later told she was discharged as a patient due to her erratic behavior.

**RCM Review**

**Prior Cases:**

**90-04-0190MD** -- *Closed NCFA.*

**07-08-0070MD** -- The complainant saw the respondent hoping that he would take over management of her chronic pain from fibromyalgia and osteoarthritis. The patient was also on medications for anxiety and narcolepsy. At the time of her first visit she was on the following medications: Endocet (Percocet), methadone, carisoprodol (Soma), clonazepam (Klonopin), nabumetone (Relafen[NSAID]) and Provigil (modafinil). The respondent did an evaluation and reportedly spent a lot of time explaining why he did not like clonazepam. The respondent required a UA for drugs. At the second visit the respondent accused the patient or her husband of selling her medication because her urine did not show the presence of hydrocodone. The patient said she took all the medications herself and that she was on percocet, not hydrocodone. A repeat UA was ordered. At the third and last visit the respondent said that the second urine test did not show high enough levels of methadone to account for her taking 40

mgs a day. The respondent then refused to see or treat her any further. The patient returned to her PCP and is now searching for another pain doctor.

***Closed Below Threshold (not investigated).***

**2009-141093** The complainant says he was incorrectly billed for a urine drug screen that was ordered by the respondent who was treating him for chronic pain. The patient was unable to produce a urine specimen during the visit but the billing went forward anyway. The insurance company agreed to remove the charge but the respondent's billing service has not yet straightened out the bill. The respondent did dismiss the patient from his practice for not providing a urine sample but the patient was fine with that.

***Closed Below Threshold (not investigated).***

**2010-147523** – Respondents are reportedly using a non CLIA waived device (Noble 12) for their point of care drug testing and are billing insurances for the testing. The Noble 12 screen includes buprenorphine. Allegedly the respondents do not follow the manufacturer's instructions to confirm all positive screening tests.

***Closed NCFA.***

**2010-150538** – The respondent discharged a pain patient from his practice after a urine done several months earlier was positive for a non prescribed substance. Respondent referred the patient to rehab facilities. The complainant feels that respondent's action amounted to abandonment of the patient.

***Currently in Case Disposition. Investigator: Gruchalla; Staff Atty: Landreau; RCM: Clower.***

**2011-155360** – The complainant writes that the respondent reported to another of his providers (an ARNP) that the complainant had had three positive urinalysis screenings for marijuana. The complainant says he has been under the care of the respondent for chronic pain for the past year and he had no knowledge of positive urine tests. He went to the respondent's office and obtained a copy of his medical records. He found a total of three urinalysis reports all showing negative for marijuana. The complainant contacted respondent's office nurse and she agreed to fax copies of the reports to the ARNP. The complainant says he works in the field of Corrections and mistakes such as this can jeopardize one's career.

***Closed NCFA/no whistleblower waiver.***

**Recommendation:**

**Hamilton, Cindy (DOH)**

---

**From:** DOH OS MQAC  
**Sent:** Monday, August 08, 2011 1:09 PM  
**To:** Hamilton, Cindy (DOH)  
**Subject:** FW: Dr. David Naibert Complaint History  
**Attachments:** IS Prod 0026097409 1.pdf

This sounds like a complaint as well as open/closed history which I will forward to Public Disclosure.

Thanks:

Lori Nimon  
Customer Services Specialist  
PO Box 47866  
Olympia, WA. 98504  
[lori.nimon@doh.wa.gov](mailto:lori.nimon@doh.wa.gov)  
(360) 236-2768 PH  
(360) 236-2795 F

---

**From:** Terry Kill [<mailto:tlk4336@gmail.com>]  
**Sent:** Monday, August 08, 2011 12:47 PM  
**To:** DOH OS MQAC  
**Subject:** Dr. David Naibert Complaint History

Greetings,

I am sending this request and information as well as an informal complaint against Dr. David K. Naibert Jr., MD, my wife was seen by him on or around July 16, 2011. It was clearly explained to him that my wife was taking oxycodone without Tylenol and why. She paid 380 dollars for her initial visit, She was not treated with any form of dignity and was cut short and showed lack of genuine concern for her concerns, after leaving the office and getting her prescription and driving to her pharmacy she noticed the doctor had written the prescription for Percocet, knowing very well that she explained that she could not take it successfully for treatment. When she called his office they said she would have to pay an additional 160 dollars to have the doctor rewrite the prescription. After so much communication with her referring doctor's office and speaking to Dr. Naibert's office again it was said that my wife was behaving erratically and would not be seen by Dr. Naibert again. This type of treatment is in my opinion erratic. I would like to know about Dr. Naibert's sanction history in Washington State please.

Terry Kill  
University of Pheonix Student  
Bachelors of Science Business Management

---

**Case View Screen** [update]

Case	2011-159136 (PUBLIC)	Date Created	08/08/2011	<b>Audit</b> Entry Items Documents Notes Master Cases <b>Participants</b> Add Master Case Timeline History
Status	Intake	Date Received	08/08/2011	
Respondent ID	428389	How Received	Email	
Respondent	DAVID KEITH NAIBERT	Receiving Board	COMMISSION	
Credential	MD.MD.00026754	Receiving Profession	Physician And Surgeon License	
Complainant ID	1001617	Receiving Department	Case Intake	
Complainant	Terry Kill	Received By	Cynthia R Hamilton	
		<b>Alleged Issues</b>		
		Improper or Abusive Billing Practices		
		Patient Care		
		Patient Neglect		
		<b>Case Nature</b>		
		Standard of Care/Services		

**Comments:**

- Priority History
- Other Participants
- Resolution
- HIPDB Reports
- Action Items

**Priority History** [add]

Date	Priority	Priority Reason	Decision Maker	Decision Date	Comment	COR	User
------	----------	-----------------	----------------	---------------	---------	-----	------

**Other Participants** [add]

No additional participants found

**Resolution** [update]

Department: Case Intake	Found Issues
Worker: Cynthia R Hamilton	none
Date Closed:	Resolution
	none

**Resolution Notes:****Current HIPDB Reports**

Type	Submission Date	Status	DCN	Case ID
------	-----------------	--------	-----	---------

No HIPDB Reports found for this credential.

**Action Items** [add] [add group]

Type	Assigned To	Activity	Due	Effective	Completed	Order Signed	Created ▼	User
Intake	Case Intake, Hamilton, Cynthia R			08/08/2011	08/08/2011		08/08/2011	Hamilton, Cynthia R
Target:	DAVID KEITH NAIBERT							
Warning:	Warning Type:	CASE PENDING						
	Warning Effective Date:	08/08/2011						
	Suppress License Print:	NO						
	Warning:	2011-159136						
Case Status:	Status Changed To:	Intake						
Action Info:	Complaint Source	Family Member						
	Possible Imminent	No						
	Danger?							
	Single Complaint							
	Process Coordination	No						
	Needed?							





## AMA Physician Profile

\*\*

**Name and Mailing Address:**

DAVID KEITH NAIBERT JR MD  
1201 N 32ND ST  
RENTON WA 98056-2126

**Primary Office Address:**

SAME AS MAILING ADDRESS

**Phone:** UNKNOWN

**Birthdate:** 10/22/1959

**Physician's Major Professional Activity:** INACTIVE

**Practice Specialties Self Designated by the Physician\*:**

**Primary Specialty:** FAMILY MEDICINE

**Secondary Specialty:** UNSPECIFIED

\*Self-Designated Practice Specialties/Areas of Practice (SDPS) listed on the AMA Physician Profile do not imply "recognition" or "endorsement" of any field of medical practice by the Association, nor does it imply, certification by a Member Medical Specialty Board of the American Board of Medical Specialties, or that the physician has been trained or has special competence to practice the SDPS.

**AMA membership:** NON MEMBER

————— All Information from this Point Forward is Provided by the Primary Source —————

**Current and/or Historical Medical School:**

UNIV OF WA SCH OF MED, SEATTLE WA 98195

**Degree Awarded:** Yes

**Degree Year:** 1987



## AMA Physician Profile

### Current and/or Historical Post Graduate Medical Training Programs Accredited by the Accreditation Council for Graduate Medical Education (ACGME):

Beginning with the 2010 cycle of the National GME Census, post-graduate training segments will include the name of the program attended in addition to the sponsoring institution. Program-level information prior to 2010 will not be available for reporting. Future training dates, as reported by the program, should be interpreted as "in progress" or "current" with the projected date of completion.

Post-graduate training performed at accredited osteopathic institutions or in Canada are updated on the AMA Physician Masterfile only upon verification by the program. US licensing authorities accept graduate medical education from both entities as equivalent to training performed in a US program accredited by ACGME.

Sponsoring Institution: VIRGINIA MASON MED CTR  
Sponsoring State: WASHINGTON  
Specialty: ANESTHESIOLOGY  
Dates: 07/1988 - 08/1989 (VERIFIED)

Sponsoring Institution: VIRGINIA MASON MED CTR  
Sponsoring State: WASHINGTON  
Specialty: FLEXIBLE OR TRANSITIONAL  
Dates: 07/1987 - 06/1988 (VERIFIED)

Note: If you have discrepant information, please submit a Request for Investigation to the AMA so that we may verify the information with the primary source(s). See the last page of this Profile for instructions on how to report a data discrepancy.

NATIONAL BOARD OF MEDICAL EXAMINERS (NBME) CERTIFICATION YEAR: MD: 1988

### Current and/or Historical Medical Licensure:

<u>Jurisdiction</u>	<u>MD/ DO</u>	<u>Date Granted</u>	<u>Expiration Date</u>	<u>Status</u>	<u>License Type</u>	<u>Last Reported</u>
MONTANA	MD*	08/09/1991	03/31/1997	INACTIVE	UNLIMITED	12/14/2004
* Please contact the state board. More information may be available.						
WASHINGTON	MD	09/05/1989	10/22/2012	ACTIVE	UNLIMITED	07/19/2011



## AMA Physician Profile

### Current and/or Historical NPI Information:

<u>NPI Number</u>	<u>Enumeration Date</u>	<u>Deactivation Date</u>	<u>Reactivation Date</u>	<u>Replacement Number</u>	<u>Last Reported Date</u>
1437169356	08/09/2006	NOT RPTD	NOT RPTD	NOT RPTD	07/26/2011

### ECFMG Certification:

#### **Applicant Number:**

Note: The Educational Commission for Foreign Medical Graduates (ECFMG) applicant identification number does not imply current ECFMG certification status. To verify ECFMG status, contact the ECFMG Certification Verification Service in writing at P.O. Box 13679, Philadelphia, PA 19101.

### Federal Drug Enforcement Administration:

\* Only the last three characters of active DEA number(s) are displayed.

<u>DEA Number *</u>	<u>Schedule</u>	<u>Expiration Date</u>	<u>Last Reported</u>
XXXXXX765	22N 33N 4 5	10/31/2011	07/11/2011

Address: 21701 76th Ave W Ste 203, Edmonds, WA 98026-7536

Note: Many states require their own controlled substances registration/license. Please check with your state licensing authority for requirement information as the AMA does not maintain this information.

### Specialty Board Certification(s)\*:

Specialty Board Certification(s) by one or more of the 24 boards recognized by the American Board of Medical Specialties (ABMS) and the American Medical Association (AMA) through the Liaison Committee on Specialty Boards, as reported by the ABMS:

The AMA Physician Profile has been designated by the ABMS as an Official ABMS Display Agent of Member Board Certification data. Therefore, the ABMS Board Certification information on the AMA Physician Profile is considered a designated equivalent source in regard to credentialing standards set forth by accrediting bodies such as the Joint Commission and National Committee for Quality Assurance (NCQA).



### AMA Physician Profile

**Certifying Board:** TO DATE, THERE HAVE BEEN NO BOARD CERTIFICATIONS REPORTED.

**Certificate:**

**Certificate Type:**

<u>Duration</u>	<u>Effective</u>	<u>Expiration</u>	<u>Reverification</u>	<u>Occurrence</u>	<u>Last Reported</u>
-----------------	------------------	-------------------	-----------------------	-------------------	----------------------

**Note:** For certification dates, a default value of "01" appears in the day or month field if data were not provided to AMA. Please contact the appropriate specialty board directly for this information. (\*\*) Indicates an expired certificate.

\*This information is proprietary data maintained in a copyrighted database compilation owned by the American Board of Medical Specialties. Copyright 2011 American Board of Medical Specialties. All right reserved.

#### Medicare/Medicaid Sanction(s):

TO DATE, THERE HAVE BEEN NO SUCH SANCTIONS REPORTED TO THE AMA BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

#### Other Federal Sanction(s):

TO DATE, THERE HAVE BEEN NO FEDERAL SANCTIONS REPORTED TO THE AMA BY ANY BRANCH OF THE US MILITARY, THE VETERAN'S ADMINISTRATION OR THE US PUBLIC HEALTH SERVICE.

#### Additional Information:

TO DATE, THERE IS NO ADDITIONAL INFORMATION FOR THIS PHYSICIAN ON FILE.

The content of the AMA Physician Profile is intended to assist with credentialing. Appropriate use of the AMA Physician Masterfile data contained on this Profile by an organization would meet the primary source verification requirements of the Joint Commission and the American Accreditation HealthCare Commission/URAC. The Physician Masterfile meets the National Committee for Quality Assurance (NCQA) standards for verification of medical education, post graduate medical training, board certification, DEA status, and Medicare/Medicaid sanctions.

If you note any discrepancies, please log onto our web site (<http://www.ama-assn.org/go/amaprofiles>) and go to the order detail page, select the D following the physician's name and enter the data in question. Or you can mark the issues on a copy of the profile and mail or fax to:

Division of Database Products and Licensing  
Attn: Credentialing Products  
515 N. State Street  
Chicago, IL 60654  
800-665-2882  
312 464-5900 (fax)

**If you have questions or need additional information, please call the AMA Profile Service customer support line at 800-665-2882.**

**Credential View Screen**

**DAVID KEITH NAIBERT**

Address:

☐ Public ☐ Mail ☐ Renewal Mail

[change public address]

DAVID KEITH NAIBERT

2 - DOH Licensee Health ...

ID 428389  
 Warnings  
 SSN/FEIN 3 - DOH Licen...  
 Contact Standing Living  
 Contact Type INDIVIDUAL  
 Birth Date 10/22/1959  
 Public File YES  
 Mailing List  
 Legacy Licensure Name NAIBERT, DAVID KEITH

Contact  
 Audit  
 Public Cases  
 Cont. Edu  
 Documents  
 Owned By/Key Mgmt  
 Exams  
 Experience  
 Notes  
 Schools  
 Supervises  
 SupervisedBy  
 Legacy  
 Librarian  
 Application  
 Other State License

2011-155360  
 NCFA  
 NO WBW

Comments: AC100705JDH

Physician And Surgeon License {form letter}

Credential # MD.MD.00026754  
 Legacy License # MD00026754  
 Application Date  
 Effective Date 10/14/2010  
 Expiration Date 10/22/2012  
 First Issuance Date 09/05/1989  
 Last Date Of Contact  
 CE Due Date 10/22/2012

Credential Status ACTIVE (10/15/2010)  
 Status Reason ACTIVE  
 Amount Due \$0.00  
 Date Last Activity 11/3/2010 3:10:19 PM  
 Last Updated by Creighton, Vicki I  
 Certificate Sent Date 10/15/2010  
 Work Queue LEGACYDATA, DOH

Audit  
 Documents  
 Workflow  
 Key Mgmt  
 Fees  
 Notes  
 Print Docs  
 Comp. Audit  
 Renewal  
 Legacy

Comments: AC100705JDH

Supervises User Defined License Data Legacy HIPDB

[update]

2011-159136

**Complainant View for 2011-159136** [\[back\]](#)

Terry Kill  [change address] Terry Kill WA  Email: <a href="mailto:tlk4336@gmail.com">tlk4336@gmail.com</a>	ID	1001617
	Contact Standing	Living
	Email	<a href="mailto:tlk4336@gmail.com">tlk4336@gmail.com</a>
	SSN/FEIN	
	Public File	YES
	Mailing List	
Contact Type		ENFORCEMENT ENTRY

Comments:

**Credentials**

Credential	Sub	License Type	License Issue	Expiration Date	Status	Reason
No Credentials on File						

[Update Contact](#)[Change Contact](#)



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE COMMISSION  
PO Box 47866, Olympia, WA 98504-7866

March 2, 2012

Terry Kill  
133 124th St SE Apt C104  
Everett, WA 98208-5784

Subject: David K. Naibert, MD  
RE: Case No. 2011-159136; MD00026754

Dear Mr. Kill:

The Medical Quality Assurance Commission has completed its investigation concerning David K. Naibert, MD. The Commission is committed to protecting the health and safety of citizens of the State of Washington. The Commission takes every complaint seriously.

To take disciplinary action against a physician's license, the Commission is required to prove by clear and convincing evidence, a high burden of proof, that the physician's conduct violated the law. After careful review of the information gathered during the investigation, the Commission determined that the evidence does not support a violation. Based on this review, the Commission closed the case.

You may request reconsideration within thirty days of receiving this letter by submitting new information to the address below. The subject of the investigation by law will be notified of any new information submitted and given a chance to respond.

Thank you for bringing your concerns to the attention of the Medical Quality Assurance Commission.

Sincerely,

Melissa McEachron, Program Administrator  
Medical Quality Assurance Commission  
PO Box 47866, Olympia, WA 98504-7866





STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE COMMISSION  
PO Box 47866, Olympia, WA 98504-7866

March 2, 2012

David K. Naibert, MD

2 - DOH Licensee Health ...

RE: David K. Naibert, MD  
Case No. 2011-159136; MD00026754

Dear Dr. Naibert:

The Medical Quality Assurance Commission has completed its investigation. The Commission is committed to protecting the health and safety of the citizens of the state of Washington. The Commission takes every complaint seriously.

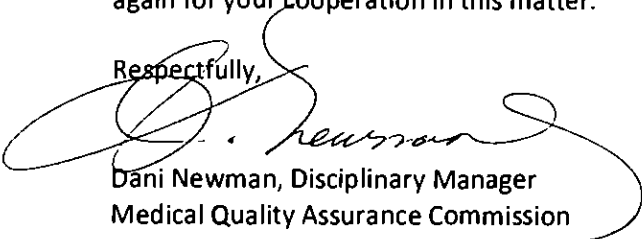
To take disciplinary action against a physician's license, the Commission is required to prove by clear and convincing evidence that the physician's conduct violated the law. After careful review of the information gathered during the investigation, the Commission determined that the evidence does not support a violation. Based on this review, the Commission closed the case.

Washington State law provides you with the right to submit an additional written statement if you wish. Any statement you provide will be added to the investigative file. The investigative file is subject to public release pursuant to the Washington State Public Records Act.

The Washington State Public Records Act also provides you with the right to request copies of documents from the investigative file. If you would like a copy of the investigative report, or copies of documents gathered during the investigation, please submit a request to the Department of Health, Public Disclosure Unit, PO Box 47865, Olympia, WA 98504-7865 or fax your request to 360-586-2171.

The Commission thanks you for your cooperation during this investigation. The Commission understands that being investigated is disconcerting and inconvenient. Many physicians use this experience to initiate a self-critique of their practice and, when indicated, modify or improve certain areas of a practice. Thank you again for your cooperation in this matter.

Respectfully,

  
Dani Newman, Disciplinary Manager  
Medical Quality Assurance Commission





EVIDENCE / ATTACHMENTS:

<u>Page</u>	<u>Description</u>
001	WAC 246-15-030 notice
002 – 005	Complaint
006	Whistleblower Waiver
007 – 008	Respondent Statement
009 – 022	Patient Medical Records and Billing Statement
023 – 024	Complainant Letters
025 – 028	Respondent Letters

## **NOTICE**

WAC 246-15-030, procedures for filing, investigation, and resolution of whistleblower complaints.

(1)(b) Instructs that staff will affix a permanent cover to the letter of complaint or other form of notice in the complaint file, noting the statutory citation concerning protecting the identity of the complainant.

(3)(c) Ensure upon case closure, that the permanent cover affixed in subsection (1)(c) of this section will remain.

RCW 43.70 provides that the identity of a whistleblower who complains in good faith to the Department of health about the improper quality of care by a health care provider as defined in RCW 43.72.010 **shall remain confidential**.

Pursuant to the above RCW and WAC it is staff's duty to see that the complainant's name or any information which may identify the complainant is not disclosed.

## **NOTICE**

**Creighton, Vicki I (DOH)**

---

**From:** Terry Kill [tlk4336@gmail.com]  
**Sent:** Monday, August 22, 2011 12:17 PM  
**To:** Creighton, Vicki I (DOH)  
**Subject:** RE: Your complaint to the Department of Health

Hi Vicki,

My mailing address is 133 124<sup>th</sup> Street South East Apt. #C104, Everett, WA 98208

My Phone number is Home# 425-903-4870 Cell# 425-442-3657

Thank you for the contact I do have more information to give regarding this incident and will provide it upon request or at the right time.

Terry Kill

---

**From:** Creighton, Vicki I (DOH) [mailto:[Vicki.Creighton@DOH.WA.GOV](mailto:Vicki.Creighton@DOH.WA.GOV)]  
**Sent:** Monday, August 22, 2011 7:20 AM  
**To:** [tlk4336@gmail.com](mailto:tlk4336@gmail.com)  
**Subject:** Your complaint to the Department of Health

Your complaint regarding Dr. David Naibert has been approved to be investigated.

Would you please provide your contact information, i.e., your mailing address and phone number. I need to send correspondence to you. Thank you.

+++++

**Vicki Creighton**

Washington State Department of Health

Medical Quality Assurance Commission

PO Box 47866 [243 Israel Road SE]

Olympia, WA 98504-7866

(360)236-2759; Fax: (360)236-2795

[Vicki.Creighton@doh.wa.gov](mailto:Vicki.Creighton@doh.wa.gov)

+++++

MQAC webpage: <http://www.doh.wa.gov/hsqa/mqac/default.htm>

Health Professions Provider Credential Search: <http://www.doh.wa.gov/hsqa/Professions/hpqualinks.htm>

**Hamilton, Cindy (DOH)**

---

**From:** DOH OS MQAC  
**Sent:** Monday, August 08, 2011 1:09 PM  
**To:** Hamilton, Cindy (DOH)  
**Subject:** FW: Dr. David Naibert Complaint History  
**Attachments:** IS Prod 0026097409 1.pdf

This sounds like a complaint as well as open/closed history which I will forward to Public Disclosure.

Thanks.

Lori Nimon  
Customer Services Specialist  
PO Box 47866  
Olympia, WA. 98504  
[lori.nimon@doh.wa.gov](mailto:lori.nimon@doh.wa.gov)  
(360) 236-2768 PH  
(360) 236-2795 F

---

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**Sent:** Monday, August 08, 2011 12:47 PM  
**To:** DOH OS MQAC  
**Subject:** Dr. David Naibert Complaint History

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Terry Kill  
University of Pheonix Student  
Bachelors of Science Business Management

---

Our initial contact with Dr. David K. Naibert's office was the result of a referral given by Dr. Andrew Lynch for the purpose of medication management. When the initial appointment was made it was required of us to supply our debit card so that we would be charged \$300 if [4 - Healthcare Inf...], the patient, did not make the appointment or reschedule it according to policy in the correct amount of working days prior to the appointment. It was explained that [4 - Hea...] gets migraines and sometimes can't make appointments and that we were uncomfortable with that, and they did not give any leniency, but rather made it clear that it was a requirement. A couple of days prior to the appointment Dr. Naibert's office called [4 - Hea...] and stated that they had not yet been able to get approval for sure from labor and industries regarding [4 - Hea...]'s treatment, and that if she was in fact denied, then she would have to come up with \$580.00 cash in order to be seen. We explained that we didn't have quite that much. Dr. Naibert's office called literally 35 minutes before the appointment and dropped the price to \$380. We explained that we only had \$360 in the bank now and that we would have to write a postdated check for the other \$20 and they agreed, which is what we did, as we had no other choice at that point, and they knew it. [4 - Hea...] was on a significant amount of pain medication. She not only had a great deal of physical pain that she is dealing with on a constant basis, she was also physically dependent.

As I mentioned in my e-mail Dr. Naibert failed to pay attention to [4 - Hea...]'s prescription and her explanation of why a specific medicine was being used do to a significant drop in the frequency of her migraine headaches, and miss-wrote the prescription. Before we turned it in to the pharmacy the mistake was noticed, and when [4 - Hea...] called in to have the prescription corrected before turning it in, on the same day of her appointment, she was told that all changes to prescription medications at their office require an office visit per policy, and that would be another \$160 cash. We were shocked! This was not possible, and they knew that, because they knew they already had every penny we had to our name that day. Consequently [4 - Hea...] was left with a month supply of Percocet instead of Oxycodone (which has no Tylenol in it to contribute to rebound headaches).

As this was very unprofessional, and the experience as a whole with Naibert's office was bad, [4 - Hea...] called Dr. Lynch to get a new referral. Along with the wrong prescription, [4 - Hea...] explained to Dr. Lynch's office that she was also made to feel uncomfortable with Dr. Naibert, as he had told [4 - Hea...] she was giving him too much information and kept cutting her off when she was trying to answer his questions and tell him her story. At that point [4 - Hea...] was told by Dr. Lynch's office that Dr. Lynch had called Dr. Naibert's office and that Dr. Naibert had acknowledged his mistake and stated that he would be glad to correct it, and asked if [4 - Hea...] would be willing to just stay with Dr. Naibert without getting another referral if he fixed it. [4 - Hea...] agreed after Dr. Lynch's office told her that upon speaking with Dr. Naibert's staff they had been informed by Dr. Lynch's assistant that [4 - Hea...] needed her corrections made that day, because it was Friday. When [4 - Hea...] tried to make contact with Dr. Naibert's office to get the corrections made they literally told her that she could not have any corrections made in their office without an office visit, and again \$160. When [4 - Hea...] tried to reason with them and ask tell them what had been told to her by Dr. Lynch's office and ask them why there were so many problems with this, and why things weren't adding up, she was hung up on, and upon calling back told that she had erratic behavior and that Dr. Naibert would not see her anymore. Needless to say this put her in a very difficult situation, and a new referral was unable to schedule her an appointment for two months out.

*Jerry Kill* 8/29/2011

425 903 4870  
425 442 3657

STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE COMMISSION  
MEDICAL INVESTIGATIONS  
\*\*\*\*\*

IMPACT STATEMENT OF COMPLAINANT  
PURSUANT TO SHB 1493

The law provides a complainant or family members of complainant an opportunity to describe the effect of the matter on the person and his or her family and to recommend a sanction. Please use this form if you wish to provide such a statement. You may attach additional pages as needed.

The Medical Commission may only impose sanctions if unprofessional conduct defined by RCW 18.130.180 is proven. The only sanctions available to the Commission are set forth in RCW 18.130.160, which limits restitution to a patient to the refund of fees billed to and collected from the consumer. You may contact your own lawyer to determine whether additional damages may be available to you in a private action.

COMPLAINANT IMPACT STATEMENT

our initial contact with Dr. David K. Naiberts office was the result of a referral given by Dr. Andrew Lynch for the purpose of medication management. It was required of us to give our debit card number to secure an appointment and it was explained that in the event my wife the patient was to miss the appointment and not appropriately cancel, our account would be charged \$350.00 (three hundred fifty dollars). We submitted to this request. A couple of days prior to the appointment Dr. Naiberts office called stating Department of Labor and would not pay for the appointment; my wife was and is on an L&T claim and that we needed to come out of pocket \$80.00 (Five hundred eighty dollars) in order to keep the appointment. We did not have that kind of money. The day of the appointment they office calls and discounts the cost 200.00 (two hundred dollars) but we only had 360.00 (three hundred sixty) they would only see her if we wrote two checks one for 360.00 and a post dated check for 20.00 (twenty) dollars. Well, we had no choice and they knew it.

I understand this complainant impact statement will be shared with the provider that is the subject of this investigation.

Signature: Jerry Hill

Date: 8/29/2011

Home Phone: 425 903 4870

Day Phone: 425 442 3657

CASE #: 2011-159136MD

RESPONDENT: David K. Naibert, MD

STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE COMMISSION  
MEDICAL INVESTIGATIONS  
\*\*\*\*\*

AUTHORIZATION TO RELEASE COMPLAINANT'S NAME  
PURSUANT TO RCW 43.70.075

RCW 43.70.075 provides in part: "The identity of a whistleblower who complains, in good faith, to the Department of Health about the improper quality of care by a health care provider, or in a health care facility, .... shall remain confidential."

I understand that my identity is confidential pursuant to RCW 43.70.075 unless waived.

By signing this document, I waive my right to confidentiality and authorize the Department of Health to release my identity to **David K. Naibert, MD**, and to other persons who are reasonably necessary to the investigation, and for use in any subsequent administrative proceeding regarding my complaint. I understand that my identity will not be released for any other purpose.

APPROVAL OF CONFIDENTIALITY WAIVER

For the sole purpose of investigating my complaint and pursuing disciplinary/adverse action proceedings, I hereby waive confidentiality and consent to the release of my identity.

Signature: *Terry Kill*  
Date: 8/26/2011  
Home Phone: 425 903 4870  
Day Phone: 425 442 3657

Printed name: Terry Kill  
Please include middle initial  
Date of birth: 10/01/1967  
PLEASE RETURN NO LATER THAN September 6, 2011

DENIAL OF CONFIDENTIALITY WAIVER

I refuse to waive my right to confidentiality and deny consent to the release of my identity. I understand this denial may impair the Department of Health's ability to pursue investigation of this matter and any disciplinary/adverse actions.

Signature: *Terry Kill*  
Date: 8/29/2011  
Home Phone: 425 903 4870  
Day Phone: 425 442 3657

CASE #: 2011-159136MD  
RESPONDENT: David K. Naibert, MD

RECEIVED

SEP 01 2011

DEPARTMENT OF HEALTH  
MEDICAL COMMISSION

David Naibert MD  
21701 76<sup>th</sup> Avenue West, Suite 203  
Edmonds, Washington 98026  
425-678-8534, 425-678-8564 fax

November 9, 2011

Denise J Gruchalla PAC  
Health Care Investigator  
Medical Quality Assurance Commission  
PO Box 47866  
Olympia, WA 98504-7866

**RECEIVED**

**NOV 14 2011**

**DEPARTMENT OF HEALTH  
MEDICAL COMMISSION**

RE File # 2011-159136MD / Naibert

Dear Ms. Gruchalla,

In response to your letter dated November 1, 2011 please find enclosed copies of the records you requested and this, my narrative statement, addressing the complaint issues.

In the first paragraph of the complaint letter I am not clear if there is a complaint being lodged other than they were uncomfortable with having to give us a deposit in case the patient had a migraine on the day of the visit and couldn't make the appointment. At that time we did have a new patient no-show deposit policy in place however we never kept a deposit if a patient's illness prevented their keeping an appointment. As an aside, we decided to abandon this new patient no-show deposit policy a few months ago because too many potential patients were put off by it. Unfortunately, since doing so our new patient no-show rate has skyrocketed. It should also be noted that we agreed to see this patient for a significantly discounted rate for her initial evaluation, charging her \$380.00 instead of the usual charge of \$530.00. I don't know where the complaint letter amount of \$580.00 for the initial evaluation came from. That is obviously another inaccuracy in the complaint letter.

In paragraph two, it is true that I recorded in my history that the patient was taking oxycodone and then accidentally wrote her prescription for an exactly equivalent dose of oxycodone with acetaminophen (Percocet). It is not true, however, that I failed to pay attention to why this patient allegedly needed her oxycodone only without acetaminophen. I never heard her story about Tylenol giving her headaches until one day later when the patient called and told this to my staff (see first phone note dated 7/20/11.) I want it clearly understood that this patient's alleged sensitivity to acetaminophen was not communicated to me at the time of her initial evaluation as evidenced by the lack of documentation to this effect in my history of her migraines or the allergy section of my history. As a rule I am very careful to ask about and document these sorts of issues during my careful initial evaluation during which I spend at least one hour and twenty minutes interviewing the patient and reviewing previous medical records.

Continuing in paragraph two, we did not hear back from the patient about the prescription mistake on the same day as the appointment. I evaluated her on 7/19/11 and she first called us

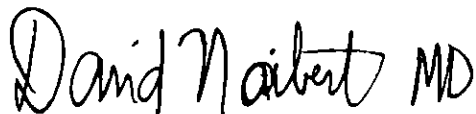


the next day on 7/20/11. At the time of her call on 7/20/11 I reviewed the chart and discovered my mistake, noting thankfully that the oxycodone in the prescription was an exactly equivalent dose to what the patient was used to getting. At that point I informed my staff to see if the patient would just use the oxycodone with acetaminophen in place of her regular oxycodone just this one month and then I would be sure to change her prescription to her preference at our next visit. The patient apparently agreed to this as noted in the chart. I did not at that time believe and still do not believe that the addition of Tylenol to her oxycodone would have any significant untoward effects on her.

We next heard from the office from which the patient was referred 16 days later on Friday August 5 (see phone notes in chart.) Again at this time the patient was still wanting to change her Percocet for oxycodone. I discussed this situation with a staff member at the referring office and told her I would consent to the patient's demands to replace her remaining Percocet with oxycodone but I also noted that this kind of behavior, this seemingly irrational, energetic, and persistent insistence on "straight" oxycodone over Percocet with Tylenol is considered in pain management practices to be a serious red flag for aberrant drug related behavior because abusers of oxycodone don't want the Tylenol in their pills because they know they will have to ingest a toxic dose of Tylenol before they can get enough oxycodone into their bodies to get high. Likewise, diverters of opioids who are selling the drugs on the street also don't want the oxycodone with Tylenol because it has a lower street value. Needless to say, I was becoming very suspicious about this new patient and her motives at this time.

Apparently the patient heard back from the referring office that I would replace her Percocet and subsequently started hounding my office staff about it even before I had a chance on a busy clinic day to talk to my office staff about it. Unfortunately, again before I even had a chance to discuss the situation with my staff, the patient called again and this time was abusive to my staff. When I read the note about that phone call I informed my staff to immediately end or relationship with the patient as is clearly delineated in item #1 of our opioid treatment agreement which the patient read, discussed with me, and signed on 7/19/11 (see copy.)

Sincerely,



David Naibert, MD

# PATIENT REGISTRATION (PI Print)

## PATIENT INFORMATION

PATIENT NAME 4 - Healthcare Information Readily Identifiable to a Per...

BIRTHDATE 4 - Healthcare Informat... AGE 36 SOC. SEC. # 4 - Healthcare Information Readily Identifiable to a Person - R... ☐ MALE ☒ FEMALE

RESPONSIBLE PARTY (if other than patient) 4 - Healthcare Information Readily Identifiable to a Person - RCW 42.56.360(2), RCW 70.02.020(1)... Date of Birth                      Relationship                     

MAILING ADDRESS 4 - Healthcare Information Readily I... APT # C104

4 - Healthcare Information Readily I... 4 - Healthcar... 4 - Healthcare Inform...

City                      State                      Zip                      +4                      Social Security Number                     

HOME PHONE 4 - Healthcare Information Readily Identifiable to a ... WORK PHONE ( )                      EMPLOYER                     

REFERRED BY Dr. Lynch PRIMARY CARE DR. Dr. Micek

MARITAL STATUS: ☐ SINGLE 1 ☒ MARRIED 2 ☐ WIDOWED 4 ☐ DIVORCED 5 ☐ SEPARATED 6 ☐ OTHER 3

IF INJURED: 11-13-09 Slip and fall ☒ WORK ☐ AUTO Y377012

Date                      Cause                      Claim #                     

### INSURANCE INFORMATION

PATIENT'S EMPLOYER                      SPOUSE'S NAME                     

OCCUPATION                      SPOUSE'S EMPLOYER                     

ADDRESS                      OCCUPATION                     

CITY, STATE, ZIP                      HOME PHONE                      WORK PHONE                     

PRIMARY INSURANCE                      PLAN COPAY \$                     

                     ☐ MALE ☐ FEMALE BIRTHDATE                     

                     Subscriber Name                      Relationship to Patient                     

                     Social Security Number                      Insurance Company Address                     

                     Subscribers Employer                     

SUBSCRIBER ID #                      GROUP ID #                     

SECONDARY INSURANCE                      PLAN COPAY \$                     

                     ☐ MALE ☐ FEMALE BIRTHDATE                     

                     Subscriber Name                      Relationship to Patient                     

                     Social Security Number                      Insurance Company Address                     

                     Subscribers Employer                     

SUBSCRIBER ID #                      GROUP ID #                     

### EMERGENCY INFORMATION

IN CASE OF EMERGENCY NOTIFY Terry Kill 206 499-5016

Name                      Home Phone                     

Relationship to Patient                      Work Phone                     

### ASSIGNMENT AND RELEASE

I hereby authorize my insurance benefits be paid directly to the healthcare provider as well as release of any information by provider or insurance company required for this account. Release of information to include: (1) alcohol and / or drug abuse treatment, (2) psychiatric diagnosis, treatment and summaries, (3) test results for HIV (Human Immunodeficiency Virus), STD (Sexually Transmitted Diseases), and (4) Treatment of HIV, STDs, AIDS (Acquired Immunodeficiency Syndrome) and related conditions. I hereby release PrimeCare from all legal responsibility or liability that may arise from disclosure of my record as provided by this paragraph.

Payment: I am financially responsible for any balance due. I agree to make payment arrangements; pay \$5 or 1% interest per month (whichever is greater) on unpaid balances over 30 days and all the reasonable expenses such as attorney fees and court costs should account be referred for collections.

4 - Healthcare Information Readily Identifiable to a Pe... 7-19-11                     

SIGNED                      DATE                      I'VE VERIFIED THAT MY PATIENT DEMOGRAPHICS ARE THE SAME. 9

SIGNED                      DATE

**LABOR & INDUSTRIES/SELF INSURED  
INTAKE AND AUTHORIZATION FORM**

**DAVID NAIBERT, M.D. LI PROVIDER#0214113**

PATIENT:

4 - Healthcare Information Readily Identifiable ...

DATE OF APPT:

Tues - July 19  
10AM

CLAIM#

Y377012

DOB

4 - Healthcare Inform...

EMPLOYER AT TIME OF  
INJURY:

DBIA Services

DATE OF INJURY:

11-13-09

ALLOWED DX CODES:

846.0, 847.2, 844.1

BODY PART:

2- Lumbar, R Side,

CLAIM MANAGER:

Hall, Terry

CLAIM MANAGER PH#

360-962-4371

IF SELF INSURED, NAME OF INSURANCE AND CLAIMS MAILING  
ADDRESS:

PO Box 44290

Olympia 98504

**AUTHORIZATION INFORMATION**

NAME OF PERSON GIVING AUTH:

Terry Hall

AUTHORIZATION START DATE:

7-19-2011

AUTHORIZATION END DATE:

**AUTHORIZATION NOT GRANTED, ACTION NEEDED:**

Not authorized - Dr Lynch stated pt  
is at "Maximum Medical Improvement"

FAXED TO JACKI:

11-04-2011

LAKE WASHINGTON PRIVATE MEDICINE

Page 1

## Transaction History

Case # A - All Cases included

60101 - 4 - Healthcar...

4 - Healthcare Information R...

Account Balance &gt; 153.00

No	Sex/Date	Code	Description	FDc/LDr	Amount	Pmts	Adj	Ins/Bal	Pat/Bal	Bal
-----										
Balance Forward										0.00
1	07-06-11	STM2	Screen		0.00					
2	07-19-11	80104	DRUG SCREEN, QUALITAT	CP/CP	150.00				150.00	150.00
			DX1: 722.10 - LUMBAR DISC DISPLACEMENT							
			DX2: 724.4 - LUMBOSACRAL NEURITIS UNSPEC							
			DX3: 724.2 - LUMBAGO							
			DX4: 719.46 - JOINT PAIN LEG							
3	07-19-11	99245	CONSULT LVL 5	CP/CP	360.00	360.00				
			DX1: 722.10 - LUMBAR DISC DISPLACEMENT							
			DX2: 724.4 - LUMBOSACRAL NEURITIS UNSPEC							
			DX3: 724.2 - LUMBAGO							
			DX4: 719.46 - JOINT PAIN LEG							
	07-19-11	PT PAYMENT CHECK	5		360.00					
	07-20-11	PT PAYMENT CHECK	5		20.00					
4	07-29-11	STM2	File		0.00					
5	09-01-11	STM2	File		0.00					
6	09-30-11	STM2	STATEMENT SENT-File		0.00					
7	10-01-11	INT	INTEREST	SC/SC	1.50				1.50	1.50
			SERVICE CHARGE							
8	11-01-11	INT	INTEREST	SC/SC	1.50				1.50	1.50
			SERVICE CHARGE							
9	11-01-11	STM2	STATEMENT SENT-File		0.00					
Totals					533.00	360.00	0.00	0.00	153.00	

End of Report. Patient/Change

Requested by JANDERSO and completed at 9:20AM on Nov 04 2011

60101 - KILL, TWYLA

Date	Description	Modified
07-19-2011	RECD LETTER FROM KAREN ELLIOTT, MEDRECS INC (206-624-1420 EXT 226) REQUESTING ITEMIZED BILLING STMT. PRINTED PT'S HISTORY FOR 1 VISIT W/DR NAIBERT. JACKI STATED FROM INBOX EMAIL FROM AMY. THEY MAILED MEDICAL RECORDS SEPARATELY.	Added by CBENN on 09/02/2011 10:38AM
07-19-2011	TODAY MAILING LTR, RELEASE OF AUTH AND 1 PG ITEMIZED BILLING HISTORY TO ATTN: KAREN ELLIOTT, MEDRECS INC, POB 4186, SEATTLE, WA 98194-0186 CB 09/02/2011	Added by CBENN on 09/02/2011 10:38AM

UP

Patient Name:

4 - Healthcare Information Readily Identifiable to a Person - RC...

Date:

7-19-11

Primary Care Physician:

Dr. Mark Micek Pike Market Medical

PCP  
206 7284143

Other physicians who need reports:

Pharmacy and phone number:

WAL\*MART (425) 741-3646

Is your pain medication working adequately?

only @ maximum dose

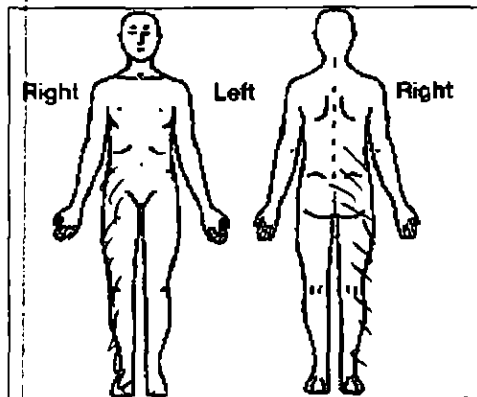
Circle what your pain level would be **IF YOU WERE NOT TAKING ANY PAIN MEDICATION:**

0 1 2 3 4 5 6 7 8 9 10  
no pain worst pain imaginable

Circle your **AVERAGE** pain level over the last week with your **CURRENT PAIN MEDICATION:**

0 1 2 3 4 5 6 7 8 9 10  
no pain worst pain imaginable

**MARK THE LOCATION OF YOUR PAIN**



Are you smoking or chewing tobacco?

No

Are you having any significant medication side effects?

Nausea I take promethazine

Are you having any problems with depression?

No

Are you having any major stress in your life?

No



DAVID NAIBERT, M.D.  
Office UA'S

Patient Name: 4 - Healthcare Information Readily Identifiable to a Person - ...

Date: 7-19-11

DRUG SCREEN

Marijuana (THC)	positive	negative
Cocaine (COC)	positive	negative
Opiates (OPI)	positive	negative
Amphetamines (AMP)	positive	negative
Methamphetamines (MET)	positive	negative
Phencyclidine (PCP)	positive	negative
Ecstasy (MDMA)	positive	negative
Barbiturates (BAR)	positive	negative
Benzodiazepines (BZO)	positive	negative
Methadone (MTD)	positive	negative
Tricyclic Anti-Depressants (TCA)	positive	negative
Oxycodone (OXY)	positive	negative

7/19/11

OK

DN

Temp: 92.1°

Collector: QB

Patient medication list: N/P



**SUBJECTIVE:** Ms. [redacted] is a 36 year old female who is referred by Dr. Lynch for consultation on the management of the patient's chronic pain. The patient comes in today with prior medical records. These were reviewed.

**PROBLEM LIST:**

1. Chronic low back pain since on-the-job fall injury in 11/09, MRI showed L5-S1 disc herniation, has had 4 ESI with some benefit, saw a surgeon who recommended against surgery.
2. Chronic right knee pain since same fall injury above, 2 MRIs were normal, has daily pain made worse by activity, has a contracture that prevents full extension.
3. Chronic intermittent pain from migraine headache since age 6, has been having them more frequently since above injury, has failed numerous medications, not sure if she has tried all seven triptans yet.

**HISTORY OF PRESENT ILLNESS:** currently taking OTC ibuprofen, oxycodone 5mg, taking 1-2 every six hours, 4/d is not adequate, 8/d is adequate, promethazine 25mg qid pm nausea

primary location: low back

radiation: into right leg

severity: 7/10 without medication

accentuation: sitting, standing, walking

alleviation: 4/10 with medication

associated symptoms: none

adverse effects: none

activities: improved with medication

aberrant drug-related behaviors: none

**FAMILY AND PERSONAL ADDICTION HISTORY:** negative, nondrinker, non-smoker.

**ALLERGIES:** PCN

**SOCIAL HISTORY:**

marital status: married 3-1/2 yrs

children: 2 children, 18yo son, 15yo daughter

education: AA degree in business

job: off work on L&I, was a crew chief for Seattle street cleaners

hobbies: church, sing

**REVIEW OF SYSTEMS:** general: no withdrawal symptoms. skin: no itching. abdomen: no abdominal pain, no nausea or vomiting, no constipation. neurological: no change in sensation, no change in strength. psychological: no symptoms of depression, no excessive sedation.

**OBJECTIVE: PHYSICAL EXAM:** general: well groomed middle aged woman appearing comfortable. skin: no apparent rashes or lesions, no sweating, no cyanosis, no erythema. HEENT: no icterus, EOMI. lungs: normal respiratory rate, without dyspnea. abdomen: nontender, nondistended. musculoskeletal: normal muscle mass, ambulates normally. neurological: alert, oriented, grossly normal strength and sensation throughout. psychiatric: normal affect, normal speech pattern

**ASSESSMENT:** 1. Chronic low back pain since on-the-job fall injury in 11/09, MRI showed L5-S1 disc herniation, has had 4 ESI with some benefit, saw a surgeon who recommended against surgery.  
2. Chronic right knee pain since same fall injury above, 2 MRIs were normal, has daily pain made worse by activity, has a contracture that prevents full extension.  
3. Chronic intermittent pain from migraine headache since age 6, has been having them more frequently since above injury, has failed numerous medications, not sure if she has tried all seven triptans yet.  
4. Chronic pain management for the above condition with opioid analgesics. The patient is receiving adequate analgesia on her current medication. She is not experiencing any significant medication related side effects. Her pain medication allows her to be more functional and active. She has a negative family and personal history for alcoholism

or drug addiction so she should be at low risk for the development of problems with chronic opioid therapy. She is not at this time exhibiting any aberrant drug related behavior, signs of addiction, or rapid development of tolerance. We discussed the risks and benefits of chronic opioid therapy versus non-opioid therapy and the patient wishes to proceed with opioid therapy for now. She would like to get off opioids someday if possible.

**PLAN:** Routine initial evaluation urine toxicology collected today.

Pain management agreement read, discussed, and signed by the patient today.

I took the liberty of prescribing medication for the patient today pending request to assume the ongoing management of this patient's chronic pain.

get records from doctors who evaluated her back and knee, including MRI reports.

get records on medications previously tried for migraines

Medication management as below.

continue present regimen for now

**MEDICATION:**-----**START OF MEDICATION**-----

oxycodone 5mg/acetaminophen 325mg, 2po qid prn pain (#224)

promethazine 25mg, 1po qid (#112)

-----**END OF MEDICATION**-----

**FOLLOW UP:** At Dr. Micek's request, I will be happy to assume the ongoing management of this patient's chronic pain. If so requested I will follow up with the patient on 8/16

David Naibert, MD, Chronic Pain Management, (425) 678-8534 office, (425)678-8564 fax

## Opioid Treatment Agreement

Opioids (oxycodone, hydrocodone, morphine, methadone, etc.), used in the treatment of chronic pain can reduce pain and improve what you are able to do each day. However, they have significant properties that make their long term use problematic or even impossible. Treatment with opioids in the United States is a privilege granted by our federal government with strict rules and regulations that must be complied with. Opioid treatment is not a right and is never a medical necessity. It is one of many treatment options and is not appropriate for all patients. The problems caused by long term use of opioids are discussed on the next page. Because of these many and serious problems and limitations, we routinely limit opioid exposure by utilizing non-opioid medications and other methods to help you with your pain. In fact, most chronic pain patients avoid all these opioid problems by treating their pain conditions without the use of opioids.

I understand that compliance with the following responsibilities is mandatory for continuing pain treatment with Dr. Naibert:

1. I will treat the office staff that work with Dr. Naibert with courtesy and respect at all times. I understand that Dr. Naibert has a zero-tolerance policy regarding rude or harassing comments or actions to the office staff. This includes but is not limited to repeated telephone calls requesting or demanding medications or early appointments with Dr. Naibert, and the use of profanity. Patients who exhibit inappropriate behavior will be terminated from the practice immediately.
2. I will protect my prescriptions and medications from loss or theft, understanding that opioid medications are **very** frequently the target of theft for illegal use. **Lost or stolen prescriptions or medication will NEVER, under any circumstances, be replaced by Dr. Naibert.** Medications should be kept in a fireproof safe and unfilled prescriptions should be given to your pharmacist or kept in a safe.
3. I will follow all prescription directions carefully. I will take medications only at the dose and frequency prescribed by Dr. Naibert. I understand that altering dose amounts and frequencies on my own, with my lack of understanding and knowledge of the complexities of pharmacology and the dangers of opioids in particular, could easily result in my death. If my medication is not working adequately I need to see Dr. Naibert to address this problem and my medication will be counted at that time to insure that I have not overused it in violation of this agreement.
4. If circumstances require an early medication refill, I understand that this will only be authorized if my remaining medication on my current prescription is counted by Dr. Naibert's staff to verify that I have not overused my medication.
5. I understand that I consent to random or scheduled medication pill counts to verify my appropriate use of my medication. If called for a random pill count I understand that I must present to the clinic or my pharmacist with my medication to be counted. This is mandatory and, due to the nature of random counts, must be submitted within eight hours of the time it is requested. Any patient who does not wish to comply with these counts will be necessarily immediately discharged from the practice.
6. I will not change or discontinue any of my pain treatment medications without the approval and advice of Dr. Naibert.
7. I will never, under any circumstances, use previous pain medication or other controlled substance prescriptions obtained and left over from other practitioners or left over from Dr. Naibert's previous treatments. These left over medications should be promptly destroyed so as not to have an accidental fatal mix-up.
8. In the event of a painful acute injury or illness I understand that I can take additional pain medication or other controlled substances such as sedatives or muscle relaxers **only if** they are prescribed by an appropriate medical professional who, in their professional judgment, deems the situation requires additional pain medication or other controlled substances. I should inform the treating professional of my chronic pain status and my current medications so that I can be treated effectively and safely (It helps to bring a copy of this agreement with you so that the treating professional can see that it is not a violation of your agreement to receive additional medication). I understand that it is my responsibility to inform Dr. Naibert of this occurrence, what medication was prescribed, and how much of it was prescribed as soon as is reasonably possible by calling during business hours or leaving a message on the office voice mail. It is **never** the treating provider's responsibility to do this.
9. I will never use another person's prescription medication or any street drugs. This is a felony criminal violation for myself **and** for the person supplying me with the medication or drug. Marijuana use, even if authorized by a state card, is still considered illegal at the federal level and since opioid use is governed at the federal level, marijuana use, as verified by urine drug screening, will necessitate the discontinuation of opioid prescribing by Dr. Naibert.

10. I will inform Dr. Naibert of all other prescription and over the counter medications that I am taking.
11. I will obtain all medications from one pharmacy and will provide Dr. Naibert with the name and phone number of this pharmacy. Dr Naibert will discuss my treatment with my pharmacist at any time it is deemed necessary.
12. I agree to participate in psychiatric or psychological assessments and treatment if deemed necessary by Dr. Naibert. Chronic pain commonly causes depression and chronic opioid medication frequently worsens this condition.
13. I agree to undergo assessment for addiction or chemical dependency if deemed necessary by Dr. Naibert. I understand that it becomes illegal for Dr. Naibert to prescribe opioids to me if my behavior becomes consistent with the medical definition of addiction.
14. I agree to not use alcohol. I clearly understand that my use of alcohol while I am taking opioid medications is a life threatening danger to me.
15. I agree to not use benzodiazepine medication (Vallum, Ativan, Xanax, clonazepam, Ambien, etc.). It has become apparent recently that the use of benzodiazepine sedatives in combination with opioids can lead to fatal respiratory depression while asleep. Consequently, Dr. Naibert will not prescribe opioids to patient's taking these medications. If you are a new patient currently taking this medication Dr. Naibert will give you the option of safely tapering off this medication.
16. I understand that I consent to random drug screening. In compliance with federal Drug Enforcement Administration guidelines Dr. Naibert does random urine, saliva, and, if necessary, serum drug testing at least two times per year on all existing chronic pain patients receiving federally controlled substances. New patient evaluations will also be tested as part of their assessment. This testing is mandatory and, due to the nature of random testing, must be submitted within two hours of the time it is requested. Any patient who cannot submit their sample in a timely fashion **BEFORE** their scheduled appointment time will still have to submit a sample within two hours but their appointment will have to be rescheduled to the next available free appointment time which may be several days later. Any patient who does not wish to comply with this testing will be necessarily immediately discharged from the practice. It is the patient's responsibility to pay for this testing, as with any other laboratory testing. We will bill your insurance company for the testing if applicable. If you are a cash pay patient you must pay for your test at the time of your visit.
17. I understand that using nicotine in any form has been clearly implicated in the process of developing and perpetuating chronic pain and, consequently, continued use of nicotine while attempting to treat chronic pain is counterproductive and a waste of limited resources. I understand that if I currently use nicotine I will be given one year's time and a lot of Dr. Naibert's help to become nicotine free. If I am unable to become nicotine free, as verified by urine drug screening, after one year then I will be necessarily immediately discharged from the practice.
18. I understand that if I am more than 5 minutes late for an appointment without calling I will be rescheduled and will not be provided with prescriptions for pain medication until the rescheduled appointment.
19. I will keep my scheduled appointments or cancel appointments a minimum of 24 hours prior to the appointment. If I fail to be present for my appointment or I fail to cancel my appointment in a timely fashion, I will pay Dr. Naibert a \$50.00 no-show fee before I will be seen again. If I have two consecutive no-shows, I will be discharged from the practice.
20. I will actively participate in return to work efforts if I am off work, my brain still functions, and I am not of retirement age. Dr. Naibert is medically and philosophically against the concept of disability and believes that opioids should only be used chronically in a patient if they allow that patient to become functional enough to get off the government payroll and go back to work. Physical jobs may not be reasonable but there are many alternative ways a patient can earn a living.
21. I understand that Dr. Naibert may stop prescribing opioids or change my treatment plan if:
- I do not show any improvement in pain from opioids or my physical activity has not improved.
  - I develop rapid tolerance or loss of improvement from the treatment.
  - I reach the maximum opioid dose limit for Dr. Naibert's practice which is 320mg per day of oxycodone or its equivalent dose in other opioids, alone or in combination.

## The Implications of the use of Chronic Daily Opioids:

Chronic opioid use leads to the development of tolerance which is an adaptive process by the patient's brain to re-establish balance despite the continued presence of the unnatural outside chemical (opioid). Tolerance develops slowly in some people and very rapidly in other people and is under genetic control so, just like you can't pick your parents, you can't pick your speed of tolerance development. If you have genetic rapid tolerance to opioids you will likely reach maximal opioid dosages in a short period of time unless you take steps, which we can discuss, to avoid this.

Going hand in hand with tolerance is a condition called physical dependence. This also happens to everyone and is unavoidable if you take a large enough dosage of opioids for a long enough time. The hallmark of physical dependence is withdrawal. This is the uncomfortable complex of symptoms you feel if you stop taking your medication abruptly because your body has adapted to the presence of the medication. Although opioid withdrawal is uncomfortable it is not life threatening and consequently opioid prescribing can be stopped abruptly if a patient is manifesting behaviors that are illegal or dangerous to his or her health. Withdrawal, once physical dependence has developed, can be avoided by tapering off opioids slowly if it is safe to do so. Alternatively, a patient can go to a hospital detox facility for help coming off of opioids abruptly such as when opioid privileges have been lost or can just gut it out on their own without outside help.

The most severe risk of opioid use is their respiratory depression effect. These medications slow the brain's drive to breath and they have a very narrow safety margin. This means that just a little more medication than is needed to give pain relief can cause the patient to stop breathing and die while sleeping. Since doctors in the U.S. started treating chronic pain patients with chronic daily opioids in the early 1990s the drug related death rate in this country has gone up by 800%. This gives you an idea of how dangerous this medication is and why we demand that patients using this medication follow all directions carefully. Additionally, we have identified that combining opioids with alcohol or several other sedatives, the most commonly used type of which are the benzodiazepines (Valium, Ativan, Xanax, clonazepam, Ambien, etc.) dramatically worsens this respiratory depression effect and dramatically increases the likelihood of death.

The second most severe risk of chronic opioid use is the potential for the development of addiction. Addiction is a severe form of mental illness which, untreated, has a very high death rate. You must have the correct genetic makeup to develop addiction but we have no 100% reliable way to test for these genes at present. Consequently, we never know for sure if a patient has the genetic potential to develop addiction or not. The only way to 100% avoid the possibility of addiction is to not expose yourself to opioids. A long length of time that you have previously taken opioids without problems does not predict that you will not develop problems in the future.

In addition to pain relief, tolerance, physical dependence, and addiction, there are many additional effects of opioids on the body. Classic side effects are constipation, sedation, nausea, and itch. These are usually manageable and sometimes short-lived as your body adapts to the opioid's presence.

Medically, we are just barely beginning to understand more complex and unanticipated additional effects that chronic opioid use has on the body. Chronic opioid use can cause or worsen pre-existing depression. We are beginning to understand a condition we call Opioid Induced Hyperalgesia which causes patients to hurt more the longer they take opioids or the larger the dose they take. This condition has profound implications because many patients get themselves trapped needlessly on opioids because their opioids are causing them to hurt so much. We also know that opioids depress sex hormone production and, consequently, sex drive. There is developing information about opioid effects on immune function which may reduce the body's ability to fight off infections and cancer. Opioids also have an affect of the temperature regulatory center in the hypothalamus of the brain, the implications of which are unknown.

*I have read this document, understand, and have had all my questions answered satisfactorily. I consent to the use of opioids to help control my pain and I understand that my treatment with opioids will be carried out as described above.*

4 - Healthcare Information Readily Identifiable to a Person - RCW 42.56.36...

Patient signature

Date

19

7/20/11 faxed CN to (Dr) PCP.

7-20-11 Pt called to see if she can switch needs (oxycodone/APAP). She stated these give her headaches. Pt was informed she would need another appointment to switch meds. Pt then stated she would fill her script the way it was written. OR DN: noted

8.5.11 TC from Amanda @ Dr. Lynn's office. Dr. Lynn's office

referred her to us and Amanda got a call from her in June stating that she's having ins. issues & may need another referral. <sup>as</sup> later she ~~she~~ <sup>she</sup> called back and said that she worked out ins. issues and would still be seeing Dr. Wainwright. Pt was seen here on 7/19/11 of today, Amanda has a msn script saying she needs a new referral for another pain mgmt. Dr. because it didn't work out here. Looked up the chart and appts. and there are no notes about her terminating her Dr/pt relationship & us. She also hasn't cancelled her appt. on 8/12. Dr. Lynn's office requested her chart notes to review. Amanda and Dr. are hesitant to keep giving her <sup>the</sup> referrals to multiple/different pain doctors. Amanda on # (360) 8605.5461 Fax # (360) 794.8638 - OR noted DN

8.5.11 Faxed chart notes to Amanda @ Dr. Lynn's office - OR Talbert to Amanda DN

8.5.11 TC from Amanda @ Dr. Lynn's office. Pt. had called and asked when if she could bring Percocet and switch out for oxycodone script. Also pt. would like to reschedule appt. on 08/11/11 to one wk later so she could come up & funds for appt since she's CD. Told Amanda that we would talk to Dr. about the switching of the meds and get back to her. OR noted DN

8.5.11 TC from pt informing us of change of phone #. Told her that we would get back to her about meds as soon

as we talked to Dr. as she ~~requested~~ <sup>requested</sup> about the ~~meds~~ <sup>meds</sup>. OR noted DN

8-5-11 Pt was verbally abusive to us on the phone. I hung up on pt & advised Dr Naibert that pt was calling me names & raising her voice. CB Cancel follow up appointment DN

8/5/11 TL FROM PT, WAS CONFUSED & ANGRY, MAD BECAUSE SHE CANT SEE TWO PH DR'S and upset about percocet informed pt that doctor will no longer tell her all above note for reference (me) noted DN

8/11/11 tc from pt. Checking on appt for tomorrow. Pt was told because of the issues that transpired on 8/5/11 (see above notes) Dr. Naibert would no longer treat pt. Pt said "OK." & OK DN

8-11-11 Faxed Chart Notes to Karen Elliott@MedRecs. Rec'd check #32559 for \$25.02 on 8-11-11. CB

David Naibert, MD  
21701 76<sup>th</sup> Avenue West, Suite 203  
Edmonds WA 98026  
Phone 425-678-8534 Fax 425-678-8564

### Privacy Policies

It is the policy of this practice, that all physicians and staff preserve the integrity and the confidentiality of Protected Health Information (PHI) pertaining to our patients. The purpose of this policy is to ensure that our practice and its physicians and staff have the necessary medical and PHI to provide the highest quality medical care possible while protecting the confidentiality of the PHI of our patients to the highest degree possible. Patients should not be afraid to provide information to our practice and its physicians and staff for purposes of Treatment, Payment, and healthcare Operations (TPO). To end that our practice and its physicians and staff will do the following:

- Adhere to the standards set forth in the Notice of Privacy Practices.
- Collect, use, and disclose PHI only in conformance with state and federal laws and current patient covenants and/or authorizations, as appropriate. Our practice and its physicians and staff will not use or disclose PHI for uses outside of practice's TPO, such as marketing, employment, life insurance application, etc. without authorization from the patient.
- Will use and disclose PHI to remind patients of their appointments unless they instruct us not to.
- Recognize that PHI collected about patients must be accurate, timely, complete, and available when needed. Our practice and its physicians and staff will respect patient's privacy to the extent consistent with providing the highest quality medical care possible and with the efficient administration of the facility.
- Act as responsible information stewards and treat all PHI as sensitive and confidential. Consequently, our practice and its physicians and staff will treat all PHI data as confidential in accordance with professional ethics, accreditation-standards and legal requirements. We will not disclose PHI data unless the patient (or higher authorized representative) has properly authorized the release or law otherwise authorized the release.
- Recognize that, although our practice "owns" the medical record, the patient has a right to inspect and obtain a copy of his/her PHI. In addition, patients have a right to request an amendment to his/her medical record if he/she believe his/her information is inaccurate or incomplete. Our practice will permit patients access to their medical records when their written requests are approved by our practice. If, we deny their request, then we must inform the patients that they may request a review of our denial. In such cases, we will have an on site healthcare professional review the patient's appeal. We will provide patients an opportunity to request the correction of inaccurate or incomplete PHI in their medical records in accordance with the law and professional standards.
- All physicians and staff of our practice will maintain a list of certain disclosures of PHI for purposes other than TPO for each patient and those made pursuant to an authorization as required by HIPM rules. We will provide this list to patients upon request, so long as their requests are in writing.
- All physicians and staff of our practice will adhere to any restrictions concerning the use or disclosure of PHI that patients have requested and have been approved by our practice.
- All physicians and staff of our practice must adhere to this policy. Our practice will not tolerate violations of this policy. Violation of this policy is grounds for disciplinary action up to and including termination of employment and criminal or professional sanctions in accordance with our practice's personnel rules and regulations.
- Our practice may change its privacy policy in the future. Any changes will be effective upon the release of a revised privacy policy and will be made available to patients upon request.

Print Name

4 - Healthcare Information Readily Identifiabl...

Sign Name

4 - Healthcare Information Readily Identifiable to a Per...

Date

7-19-11





STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE COMMISSION  
PO Box 47866, Olympia, WA 98504-7866

August 22, 2011

Terry Kill  
133 - 124th ST SE  
Apt #C104  
Everett, WA 98208

COPY

RE: David K. Naibert, MD  
Case No. 2011-159136MD

Dear Terry Kill:

Thank you for your recent letter in which you express concerns regarding medical care provided by David K. Naibert, MD. Your complaint has been assigned case number 2011-159136MD.

Your complaint will be investigated to determine if a violation of the Uniform Disciplinary Act, RCW 18.130.180, Unprofessional Conduct, has occurred. If you have any additional information pertaining to your complaint, please forward it along with a copy of this letter to me at the address listed below. Please understand that you may not hear from us during the investigation. If we need additional information from you, one of the Commission's investigators will contact you.

Enclosed for your information is the brochure, *What Happens Next?* along with a copy of RCW 18.130.180, the statute that identifies Unprofessional Conduct. Once the investigation is complete, a panel of the Medical Quality Assurance Commission will review the facts of the case and make a decision. You will be notified in writing of the decision.

Please be aware that this process can take three to six months, and in some cases, longer. If you wish to amend your complaint, you may send supplemental information to me at the address below.

Thank you for bringing your concerns to the attention of the Medical Quality Assurance Commission. If you have any questions or need additional information, please call me at 360-236-2770, or contact me by email at [jim.smith@doh.wa.gov](mailto:jim.smith@doh.wa.gov).

Sincerely,

James H. Smith, Chief Investigator  
Medical Quality Assurance Commission  
PO Box 47866  
Olympia, WA 98506-7866

Enclosures: What Happens Next?  
RCW 18.130.180



MD 2011-159136-000021



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE COMMISSION  
PO Box 47866, Olympia, WA 98504-7866

August 22, 2011

Terry Kill  
133 - 124th ST SE  
Apt #C104  
Everett, WA 98208

RE: David K. Naibert, MD  
Case No. 2011-159136MD

COPY

Dear Terry Kill:

Washington state law, RCW 43.70.075, pertains to the "Whistleblower Law" which requires that the identity of a complainant/whistleblower who complains in good faith to the Department of Health about improper quality of care by a health care provider shall be kept confidential. Your voluntary waiver of confidentiality in the form of a written Authorization to Release Complainant's Name will be necessary for the investigation to proceed. This is necessary so the provider can respond appropriately to the allegations of your complaint and provide records specific to your complaint. I have enclosed this form for your signature, along with a postage paid envelope for its return. Once your waiver is received, your identity will be released solely for the purposes of investigation and potential adjudication. Your identity will be protected in all other instances and will not be released in response to public disclosure requests. ***Your signed waiver is due back to this office no later than September 6, 2011.***

You will also find enclosed a Complainant Impact Statement form to fill out and return if you wish. If returned, your impact statement will be shared with the provider under investigation.

If you have any questions, please contact me at (360) 236-2770.

Thank you for your cooperation.

Sincerely,

James H. Smith, Chief Investigator  
Medical Quality Assurance Commission  
Medical Investigations

Attachments: Return Envelope  
Waiver of Confidentiality of Identity  
Complainant Impact Statement

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STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE COMMISSION  
PO Box 47866, Olympia, WA 98504-7866

August 22, 2011

David K. Naibert, MD

2 - DOH Licensee Health ...

SUBJECT: Case No: 2011-159136MD

COPY

Dear Dr. Naibert:

The purpose of this letter is to inform you that the Medical Quality Assurance Commission received a report concerning an allegation of unprofessional conduct as defined in RCW 18.130.180(4), the Uniform Disciplinary Act. RCW 18.130.050, of the Uniform Disciplinary Act, authorizes the Medical Quality Assurance Commission to investigate complaints of unprofessional conduct.

A preliminary investigation to gather the facts will be conducted by a Health Care Investigator from the Medical Quality Assurance Commission, Medical Investigations Unit. The investigator will contact you as soon as possible during the investigation if a statement or other information from you is required.

Please note that the Medical Quality Assurance Commission is bound by statute to comply with two different laws, which may seem to conflict. The first requires that we immediately notify a practitioner that a complaint has been filed. ***The second, the whistleblower law RCW 43.70.075, prohibits us from releasing the name of the complainant or any specific details about the report which could identify the complainant until we have received a signed waiver authorizing us to do so. We are sensitive to the fact that it can be very disconcerting to know a complaint has been filed against you, but not know any details about it. Therefore, once the waiver has been obtained, an investigator will contact you as soon as possible and all issues will be discussed as fully as allowed by law so that you will have an opportunity to respond.*** In a very small percentage of cases, a statement from you will not be required and no investigator will contact you.

You may submit a written statement about the complaint at any time, however, you may choose to wait until after you have been contacted by an investigator and advised of the nature of the complaint. You may consult with legal counsel at your expense prior to making a statement. Any statement that you make may be used in an adjudicative proceeding concerning this case. If the Commission receives any inquiries about the status of your license while this case is still open, only the existence of a complaint will be disclosed. Once the investigation and case review process has been completed, the case will either be closed or acted upon. The contents of the closed case file, including any statements submitted by you, will be subject to release according to Washington's public disclosure laws. Most public disclosure requests come from insurance companies and employers.

We have enclosed our informational brochure What Happens Next? along with a copy of RCW 18.130.180 Unprofessional Conduct. Please be aware that this process can take three to six months and in some cases longer. If you have questions, please contact me at 360-236-2770.

Respectfully,

James H. Smith, Chief Investigator  
Medical Quality Assurance Commission

Enclosure: What Happens Next, RCW 18.130.180

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MD 2011-159136-000023



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE COMMISSION  
PO Box 47866, Olympia, WA 98504-7866

November 1, 2011

David K Naibert MD

2 - DOH Licensee Health Prof...

Re File #: 2011 - 159136MD / Naibert

Dear Dr. Naibert:

The Medical Quality Assurance Commission has received a complaint concerning the health care you provided to Twyla M. Kill on or around July 2011 regarding management of chronic pain.

A copy of the complaint is enclosed for your review.

The Medical Quality Assurance Commission is the entity within State government with legislated authority and responsibility to assure the delivery of safe health care. Under the provisions of RCW 18.130.050, the Washington State Medical Quality Assurance Commission is empowered to investigate all allegations and complaints to determine whether such allegations are substantiated and to take disciplinary or corrective action, if warranted.

Please be advised this is a preliminary investigation only and no charges have been issued in connection with this investigation.

Under provisions of RCW 18.130.180(8) and WAC 246-919-620 a licensee shall cooperate by providing a full and complete explanation covering the matter under investigation.

The Health Care Information Act, RCW 70.02.050 (2)(a), requires that a health care provider disclose health care information about a patient without patient authorization when the information is needed to determine compliance with state licensure rules or laws.

Under the terms of the laws mentioned, you are asked to provide:

1. The complete medical record for Twyla M Kill, DOS July 2011
2. Copies of all telephone interactions with Ms. Kill
3. All billing statements
4. Copies of all office policies given to patient pertaining to appointments, fees and payments and pain management
5. A narrative statement addressing the complaint issues.

Page 2

2011- 159136MD / Naibert

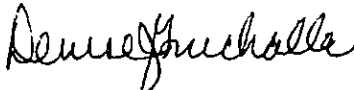
You may consult with and engage an attorney at your expense to represent you in this matter before making your response. Your response may be used if disciplinary action is deemed necessary. If you wish to have an attorney represent you, please have the attorney file a Letter of Representation at the address below.

Please submit your response **within fourteen (14) days after receipt** of this letter. Mail your response to:

Denise J Gruchalla PAC, Health Care Investigator  
Medical Quality Assurance Commission  
P.O. Box 47866  
Olympia, Washington 98504-7866

Thank you for your cooperation.

Respectfully,



Denise J Gruchalla  
Health Care Investigator  
Tel: 360-236-2775, Fax 360-586-4573  
Denise.gruchalla@doh.wa.go

Attachments: Copy of Complaint

1-14-11 1:48 PM  
1-14-11 1:48 PM

Our initial contact with Dr. David K. Naibert's office was the result of a referral given by Dr. Andrew Lynch for the purpose of medication management. When the initial appointment was made it was required [REDACTED] to supply [REDACTED] debit card so that [REDACTED] would be charged \$300 if [4 - Healthcare Info...], the patient, did not make the appointment or reschedule it according to policy in the correct amount of working days prior to the appointment. It was explained that [4 - Hea...] gets migraines and sometimes can't make appointments and [REDACTED] uncomfortable with that, and they did not give any leniency, but rather made it clear that it was a requirement. A couple of days prior to the appointment Dr. Naibert's office called [4 - Heal...] and stated that they had not yet been able to get approval for sure from labor and industries regarding [4 - Hea...]'s treatment, and that if she was in fact denied, then she would have to come up with \$580.00 cash in order to be seen. [REDACTED] explained that [REDACTED] didn't have quite that much. Dr. Naibert's office called literally 35 minutes before the appointment and dropped the price to \$380. [REDACTED] explained that we only had \$360 in the bank now and [REDACTED] would have to write a postdated check for the other \$20 and they agreed, which is what [REDACTED] did, [REDACTED] had no other choice at that point, and they knew it. [4 - Hea...] was on a significant amount of pain medication. She not only had a great deal of physical pain that she is dealing with on a constant basis, she was also physically dependent.

[REDACTED] Dr. Naibert failed to pay attention to [4 - Hea...]'s prescription and her explanation of why a specific medicine was being used do to a significant drop in the frequency of her migraine headaches, and miss-wrote the prescription. Before [REDACTED] turned it in to the pharmacy the mistake was noticed, and when [4 - Hea...] called in to have the prescription corrected before turning it in, on the same day of her appointment, she was told that all changes to prescription medications at their office require an office visit per policy, and that would be another \$160 cash. [REDACTED] shocked! This was not possible, and they knew that, because they knew they already had every penny [REDACTED] that day. Consequently [4 - Hea...] was left with a month supply of Percocet instead of Oxycodone (which has no Tylenol in it to contribute to rebound headaches).

As this was very unprofessional, and the experience as a whole with Naibert's office was bad, [4 - Hea...] called Dr. Lynch to get a new referral. Along with the wrong prescription, [4 - Hea...] explained to Dr. Lynch's office that she was also made to feel uncomfortable with Dr. Naibert, as he had told [4 - Hea...] she was giving him too much information and kept cutting her off when she was trying to answer his questions and tell him her story. At that point [4 - Hea...] was told by Dr. Lynch's office that Dr. Lynch had called Dr. Naibert's office and that Dr. Naibert had acknowledged his mistake and stated that he would be glad to correct it, and asked if [4 - Hea...] would be willing to just stay with Dr. Naibert without getting another referral if he fixed it. [4 - Hea...] agreed after Dr. Lynch's office told her that upon speaking with Dr. Naibert's staff they had been informed by Dr. Lynch's assistant that [4 - Hea...] needed her corrections made that day, because it was Friday. When [4 - Hea...] tried to make contact with Dr. Naibert's office to get the corrections made they literally told her that she could not have any corrections made in their office without an office visit, and again \$160. When [4 - Hea...] tried to reason with them and ask tell them what had been told to her by Dr. Lynch's office and ask them why there were so many problems with this, and why things weren't adding up, she was hung up on, and upon calling back told that she had erratic behavior and that Dr. Naibert would not see her anymore. Needless to say this put her in a very difficult situation, and a new referral was unable to schedule her an appointment for two months out.

[REDACTED] 8/29/2011 [REDACTED]

Redaction Summary ( 91 redactions )

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5 Privilege / Exemption reasons used:

1 -- "Attorney Work Product - RCW 42.56.290" ( 1 instance )

2 -- "DOH Licensee Health Professional Home Address and/or Phone - RCW 42.56.350(2)" ( 6 instances )

3 -- "DOH Licensee Social Security Number - RCW 42.56.350(1)" ( 1 instance )

4 -- "Healthcare Information Readily Identifiable to a Person - RCW 42.56.360(2), RCW 70.02.020(1), RCW 42.56.070(1)" ( 58 instances )

5 -- "Healthcare Integrity and Protection Data Bank Information or National Practitioner Data Bank Information - 45 CFR 61.14, RCW 42.56.070(1)" ( 25 instances )

Redacted pages:

Page 3, DOH Licensee Health Professional Home Address and/or Phone - RCW 42.56.350(2), 1 instance  
Page 8, Attorney Work Product - RCW 42.56.290, 1 instance  
Page 9, DOH Licensee Health Professional Home Address and/or Phone - RCW 42.56.350(2), 1 instance  
Page 10, Healthcare Information Readily Identifiable to a Person - RCW 42.56.360(2), RCW 70.02.020(1), RCW 42.56.070(1), 2 instances  
Page 17, Healthcare Integrity and Protection Data Bank Information or National Practitioner Data Bank Information - 45 CFR 61.14, RCW 42.56.070(1), 8 instances  
Page 18, Healthcare Integrity and Protection Data Bank Information or National Practitioner Data Bank Information - 45 CFR 61.14, RCW 42.56.070(1), 9 instances  
Page 19, Healthcare Integrity and Protection Data Bank Information or National Practitioner Data Bank Information - 45 CFR 61.14, RCW 42.56.070(1), 8 instances  
Page 29, DOH Licensee Health Professional Home Address and/or Phone - RCW 42.56.350(2), 1 instance  
Page 29, DOH Licensee Social Security Number - RCW 42.56.350(1), 1 instance  
Page 32, DOH Licensee Health Professional Home Address and/or Phone - RCW 42.56.350(2), 1 instance  
Page 37, Healthcare Information Readily Identifiable to a Person - RCW 42.56.360(2), RCW 70.02.020(1), RCW 42.56.070(1), 17 instances  
Page 38, Healthcare Information Readily Identifiable to a Person - RCW 42.56.360(2), RCW 70.02.020(1), RCW 42.56.070(1), 1 instance  
Page 42, Healthcare Information Readily Identifiable to a Person - RCW 42.56.360(2), RCW 70.02.020(1), RCW 42.56.070(1), 9 instances  
Page 43, Healthcare Information Readily Identifiable to a Person - RCW 42.56.360(2), RCW 70.02.020(1), RCW 42.56.070(1), 2 instances  
Page 44, Healthcare Information Readily Identifiable to a Person - RCW 42.56.360(2), RCW 70.02.020(1), RCW 42.56.070(1), 2 instances  
Page 46, Healthcare Information Readily Identifiable to a Person - RCW 42.56.360(2), RCW 70.02.020(1), RCW 42.56.070(1), 1 instance  
Page 48, Healthcare Information Readily Identifiable to a Person - RCW 42.56.360(2), RCW 70.02.020(1), RCW 42.56.070(1), 1 instance  
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